Calendar No. 774

97th Congress
2d Session

SENATE

Report
No. 97-536

DEPOSITORY INSTITUTIONS AMENDMENTS OF 1982

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2879

together with

ADDITIONAL VIEWS

September 3, 1982.—Ordered to be printed

Filed under authority of the order of the Senate of August 20 (legislative day, August 17), 1982

U.S. GOVERNMENT PRINTING OFFICE
89-010 O WASHINGTON : 1982

S243-6

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

JAKE GARN, Utah, *Chairman*

JOHN TOWER, Texas
JOHN HEINZ, Pennsylvania
WILLIAM L. ARMSTRONG, Colorado
RICHARD G. LUGAR, Indiana
ALFONSE M. D'AMATO, New York
JOHN H. CHAFEE, Rhode Island
HARRISON "JACK" SCHMITT
New Mexico
NICHOLAS F. BRADY, New Jersey

DONALD W. RIEGLE, Jr. Michigan
WILLIAM PROXMIRE, Wisconsin
ALAN CRANSTON, California
PAUL S. SARBANES, Maryland
CHRISTOPHER J. DODD, Connecticut
ALAN J. DIXON, Illinois
JIM SASSER, Tennessee

M. Danny Wall, *Staff Director*
Robert W. Russell, *Minority Staff Director*
John T. Collins, *General Counsel*
Charles L. Marinaccio, *Minority Counsel*
Beth L. Climo, *Senior Counsel*
Linda C. Zemke, *Counsel*
Carolyn Jordan, *Minority Counsel*
James E. Boland, *Counsel*
Steven B. Harris, *Minority Counsel*

CONTENTS

Page
History of legislation 1
  Explanation of the bill:
    Title I: Deposit insurance flexibility 3
      Part A: FDIC amendments 5
      Part B: Federal Home Loan Bank Board 7
      Part C: National Credit Union Administration 8
      Part D: Sunset provision 8
    Title II: Capital assistance 9
    Title III: Thrift institutions restructuring 13
      Preemption of state due-on-sale restrictions 20
      Window period loans 22
      Limitations on the enforcement of due-on-sale clauses 24
    Title IV: Provisions affecting national and member banks 25
      Lending limits 26
      Borrowing limits 27
      Real estate lending 27
      Bankers' banks 27
      Name or headquarters change 28
      Venue 28
      Unclaimed property 28
      Visitorial powers 29
      Bankers' acceptances 29
      Banking affiliates 30
      Reserve requirements 32
      Real estate holdings of national banks 33
      Insider loans 33
      Disclosure of material facts 33
      Foreign banks exclusion 34
      Management interlocks 34
    Title V: Amendment to the Federal Credit Union Act 34
    Title VI: Bank holding company insurance activities 36
    Title VII: Miscellaneous 42
Section-by-section summary 45
Regulatory impact 72
Cordon rule 72
Cost of legislation 72
Additional views of Senator Chafee 73

Calendar No. 774

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-536

DEPOSITORY INSTITUTIONS AMENDMENTS OF 1982

SEPTEMBER 3, 1982.—Ordered to be printed

Filed under authority of the order of the Senate of AUGUST 20 (legislative day, AUGUST 17), 1982

Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2879]

The Committee on Banking, Housing, and Urban Affairs, having considered the same, reports favorably a committee bill (S. 2879) To provide flexibility to the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, and the Federal supervisory agencies to deal with financially distressed depository institutions, to enhance the competitiveness of depository institutions, to expand the range of services provided by such institutions, to protect depositors and creditors of such institutions, and for other purposes, and recommends that the bill do pass.

HISTORY OF THE LEGISLATION

During the past eighteen months, the Committee has held numerous oversight and legislative hearings on conditions within the financial system. On January 7 and 8, 1981, the Committee conducted general oversight hearings on conditions within the economy. In part as a follow-up to issues raised in those hearings, the

89-010/536 O

Committee held seven days of hearings in late April and Early May, 1981, concerning competition and conditions in the financial system. These hearings dealt with a broad range of issues, including the increasing competition between depository and nondepository financial institutions, the deteriorating state of many thrift institutions as a result of their inability to adjust their long-term mortgage portfolios to high and widely fluctuating short-term deposit interest rates, and the need to update statutes to accommodate the changes which have already occurred in the financial marketplace.

On October 7, 1981, S. 1720 was introduced as a means by which the Committee could focus attention on Financial institution issues and consider various pending legislative proposals. That legislation incorporates several bills that Committee members and other Senators previously introduced, including legislation to: increase the authority of banks to issue bankers acceptances (S. 1737); permit greater flexibility in lending transactions between a bank and its affiliates (S. 1680); allow all depository institutions to operate and sell shares in mutual funds (S. 1424); preempt state usury ceilings (S. 1406); restrict bank holding company insurance activities (S. 207); and authorize commercial banks to underwrite revenue bonds (S. 1427).

Other provisions in S. 1720 were first proposed by the Administration and the Federal financial regulators. For example, the provisions broadening the investment authority of Federal thrift institutions was previously introduced (S. 1703) by request of the Federal Home Loan Bank Board and the Administration. The provisions that establish standards under which the Federal insuring agencies may arrange, under extraordinary circumstances, interstate and cross-industry mergers and acquisitions (referred to as the Regulators Bill) have been proposed by Federal financial institution supervisors for over two years.

In October and November, 1981, the Committee held eight days of hearings on S. 1720 and related bills, receiving testimony from witnesses representing Federal and State regulators, consumer groups, and all sectors of the financial community potentially affected by the legislation. In addition, three days of hearings had been held by the Financial Institutions Subcommittee in July, 1981 focusing specifically on S. 1406, containing the same usury provisions incorporated into S. 1720. Further hearings were conducted in February 1982 by the Securities Subcommittee on those provisions of S. 1720 authorizing securities activities for depository institutions and, more specifically, a proposal by the Treasury Department (subsequently introduced, by request of Treasury, as S. 2490) to permit such activities only through separate bank holding company subsidiaries.

In May of this year, a revised Regulators Bill (S. 2532) was introduced by request of the Federal insuring agencies, as well as a bill (S. 2531) to provide capital assistance to depository institutions engaged in mortgage lending. On May 26 and 27, the Committee conducted hearings on S. 2531 and S. 2532, receiving testimony from Federal and State regulators and representatives of affected financial institutions.

On August 19, the Committee considered and ordered reported by affirmative vote of the following members of the Committee: Senators Garn, Tower, Heinz, Lugar, D'Amato, Chafee, Schmitt, Brady, Riegle, Proxmire, Cranston, Sarbanes, Dodd, and Dixon. Legislation which contains many of the titles and provisions of the aforementioned bills. No amendments or revisions were made to the legislation during the mark-up session. The following is a summary of the Print:

Title I—Expands FDIC and FSLIC powers to assist troubled depository institutions and, when appropriate, to arrange interstate and cross-industry acquisitions of such institutions. It also broadens the National Credit Union Administration's authority regarding the merger of a financially distressed credit union. This Title also authorizes a savings bank to convert from state to federal charter and continue to be FDIC insured.

Title II—Establishes a program whereby FDIC and FSLIC insured institutions may exchange capital notes with those agencies to shore up the institutions' net worth.

Title III—Broadens the lending and investment powers of Federal thrift associations and facilitates the conversion of an association from state to federal charter and from mutual to stock form. This Title also includes provisions: directing the Depository Institutions Deregulation Committee to adopt a new deposit instrument within 60 days of the legislation's enactment to compete effectively with money market funds; eliminating all deposit interest rate differentials by January 1, 1985; and preempting prohibitions against the enforcement of due-on-sale clauses in mortgage contracts with exceptions.

Title IV—Amends various statutory provisions primarily affecting commercial banks to revise outdated lending and borrowing limits, permit federal chartering of bankers' banks, liberalize and reform bankers acceptance and banking affiliate statutes and exempt small depository institutions from reserve requirements. This Title also makes minor modifications to the Financial Institutions Regulatory Act of 1978.

Title V—Amends the Federal Credit Union Act to simplify the organization process for credit unions, broaden their mortgage lending powers, and clarify and make technical modifications to numerous provisions in that Act.

Title VI—Restricts the insurance activities of bank holding companies.

Title VII—Miscellaneous provisions.

EXPLANATION OF BILL

TITLE I: DEPOSIT INSURANCE FLEXIBILITY

For the past two years, the Committee has considered legislation to expand the authority of the FDIC, FSLIC and NCUA to assist troubled depository institutions through financial aid and broadened merger options. The need for this legislation is evidenced by the increasing number of supervisory mergers arranged and, in many cases, assisted by the Federal insuring agencies.

During the period January 1, 1981 through July 30, 1982, 26 commercial banks and 9 mutual savings banks were closed by the FDIC because of financial difficulties. Although only 4 of these necessitated direct payment of insured deposits by the FDIC, the total cost of FDIC assistance in these 35 instances has been $1.7 billion. If 1981 losses for savings banks continue, by the end of 1983, 16 savings banks (with $21 billion in assets) will have negative net worth, and 42 savings banks (with $34 billion in assets) will have net worth between 0 and 3 percent. While the FDIC fund exceeds $13 billion in assets and its annual income is approxiatley $2 billion, the importance of preserving the fund's resources is obvious from the significant cost of assistance already committed to distressed institutions.

The FSLIC has processed a wave of merger applications from savings and loan associations attempting to strengthen their operations and improve operational efficiencies, as well as an increasing number of applications regarding distressed savings and loan associations, during the past year and a half. In 1981, 328 savings and loans disappeared as a result of voluntary merger transactions and, from January through July 20 of this year, another 281 savings and loans were voluntarily merged out of existence.

Since 1981, when savings and loan associations had an aggregate net worth of $32.2 billion, their earnings decline and losses resulted in an industry net worth of $24.7 billion as of June 30, 1982. As of that date, there were 1,055 savings and loan associations (with $270 billion in assets) with net worth of 3 percent or less, and 223 of those associations (with $40 billion in assets) had net worth of less than 1 percent. Using an interest rate scenario based on a Treasury bill rate of 9½ percent, the FHLBB has projected that there will be 1,110 associations with 3 percent or less net worth by the end of 1982, with 264 of those associations with 1 percent or less net worth. Using a 13½ percent Treasuary bill rate scenario, there will be 1,511 associations with 3 percent or less net worth by the end of this year, with 471 of those associations with 1 percent or less net worth.

During 1981, there were 61 supervisory mergers arranged by FSLIC, with 23 of that number requiring some form of FSLIC assistance. From January 1 through July 20 of this year, there were 105 supervisory mergers, 16 of which required assistance. The total cost of FSLIC assistance during the past eighteen months has been approximatley $1.5 billion. FSLIC's fund has $7 billion in assets and its annual income is just over $1 billion.

With respect to credit unions, there have been 86 insured credit unions liquidated and 248 mergers from January 1, 1982 to June 30, 1982, and NCUA has incurred costs of $6.7 million in such situations. The Committee expects that the NCUA will be faced with continued liquidation and merger activity and recognizes the urgent need for further flexibility to facilitate mergers and purchase and assumptions. Additional flexibility is also needed in order to give the NCUA the important option of exercising conservatoryship when necessary to prevent losses of credit union assets, therby providing further protection to the NCUA Share Insurance Fund.

Presently the National Credit Union Share Insurance Fund has an equity of $177 million, and it insures approximately $60 billion in credit unions. At its July 7, 1982 meeting, the NCUA Board authorized a special additional insurance premium of 1/18th of 1 percent for the 1981 insurance year. This is expected to raise an additional $30 million for the Fund.

As a result of public concern brought about by adverse publicity over the condition of depository institutions and the safety of insured deposits, in March of this year the Senate and House passed a resolution, H. Con. Res. 290, affirming that insured deposits are backed by the full faith and credit of the Federal Government. Since the 1930's, depositors have relied on the Federal insurance agencies to cover insured deposits, and passage of this resolution emphasized Congress' continued commitment to a strong and stable financial system.

The problems of mutual savings banks and savings and loan associations have largely resulted from an economic environment characterized by high and volatile interest rates, in which the cost of funds has increased rapidly, while slow repayment of old mortgages has led to an extremely sluggish increase in gross asset yields. Thrifts had been accumstomed to a relatively stable economic environment in which a positive yield curve was the norm, and they had been able to remain profitable by borrowing short and lending long. However, over the last several years thrift institutions have been the victims of fluctuating interest rates and a negative yield curve. As such institutions' profits have turned to losses and their net worths have declined, the FDIC and FSLIC have developed programs to deal with problem and failing institutions.

The principal purpose of this article is to provide the agencies with better tools for dealing with failing institutions and to facilitate and expand upon such programs so as to strengthen the resources of the Federal insurance funds.

PART A: FDIC AMENDMENTS

The bill expands FDIC's powers to assist troubled banks by allowing either direct or merger-related assistance (a) to prevent the closing of or to reopen any insured bank or (b) when severe financial conditions threaten the stability of a significant number of banks or of banks with significant financial resources. The latter test replaces a requirement that the FDIC determine that an insured bank is "essential" to its community before providing assistance. The FDIC's flexibility in providing assistance is also increased by permitting such assistance to holding companies, FSLIC-insured institutions, or other persons relating to a merger with or an acquisition of an insured bank. The forms of assistance which may be provided are also expanded to include assumption of liabilities, deposits, contributions, and purchase of securities.

In order to maximize the resources of the FDIC fund, the bill allows commercial banks and mutual savings banks with assets of $500 million or more which are closed or, in the case of mutual savings banks are in danger of closing, to be acquired on an interstate and/or cross-industry basis. In arranging such mergers, the bill requires the FDIC to consult with the appropriate State regulator and allow such person at least twenty-four hours to object to the use of the extraordinary powers provision. If a State regulator objects, the FDIC may proceed only by a unanimous vote of its Board of Directors.

With the consent of the State regulator or by unanimous vote of FDIC's Board, the FDIC is then authorized to solicit bids from prospective qualified purchasers of the insured bank. If the bid that results in the lowest cost to the FDIC is from an in-State same-type institution as the failing institution, the in-state same-type institution would be the acquiror. If such an institution is not the lowest bidder, all persons who submitted bids within 15 percent or $15 million of the lowest cost first bid may submit new bids. After the second round of bidding, the FDIC is directed to authorize transactions considering the following priorities; in-state, same-type institution; in-state, different type institutions; out-of-state, same-type institutions; and lastly, out-of-state, different type institutions. Additionally, when considering offers from out-of-state institutions, the FDIC shall give priority to institutions in adjacent states. If an out-of-state bid is accepted, the bill requires that the acquired institution may branch only to the extent that a national bank can in the state in which such institution is located. In considering authorizations, the FDIC is directed to give consideration to the need to minimize the cost of financial assistance and to the maintenance of specialized depository institutions.

Federal savings banks

In addition to FDIC assistance powers, Part A also facilitates Federal chartering of savings banks. This is intended to correct a regulatory impasse which has effectively barred savings banks from converting from State to Federal charter.

The Financial Institutions Regulatory and Interest Rate Control Act of 1978 granted the Federal Home Loan Bank Board the authority to charter Federal savings banks converting from a State charter. Under the system provided by that legislation, a converting savings bank would relinquish its FDIC insurance and obtain insurance of accounts from the Federal Savings and Loan Insurance Corporation. The legislation, therefore, provided that the FDIC should indemnify the FSLIC against "any losses incurred by it which arise out of losses incurred by the converting bank prior to conversion," and directed the two agencies to mutually agree on what constituted such losses.

In the recent experience of the thrift industry, with its attendant losses, the agencies have not been able to agree, and as a result the Federal savings bank program has been almost completely stalled.

The Committee bill addresses this problem by providing the Bank Board with the authority to issue a Federal charter to a savings bank, with the institution retaining its FDIC insurance. As a corollary to this process, the existing indemnification formula would be eliminated. In adopting these provisions, the Committee intends that this be a temporary solution and that as economic conditions improve, the FSLIC should, to the extent possible, insure federally-chartered savings banks.

In administering these sections, the Committee intends that the FHLBB should have primary regulatory supervision over Federal savings banks, including, for example, authority over investments, branching, mergers, and operational matters such as net worth requirements. With this purpose in mind, the Committee has limited the authority of the FDIC to the functions set forth in the bill; for example, FDIC access to examination and call reports, the right to make special examinations, the authority to approve mergers and consolidations with institutions not insured by the FDIC and, after appropriate notice to and consultation with the FHLBB, to exercise termination of insurance authority under 12 U.S.C. 1818(a). Under this framework, the FDIC, as insurer, would retain essentially the same powers over the institution as it now has over national banks.

As an adjunct to the chartering option described above, the bill authorizes the FDIC to require conversion of a State mutual savings bank into a Federal stock savings bank if it is necessary to prevent the failure of such an institution, to reopen it, or when severe financial conditions exist which threaten its stability.

PART B: FEDERAL HOME LOAN BANK BOARD

These provisions are generally similar to those providing the FDIC with expanded powers. The bill expands FSLIC's powers to assist troubled thrift institutions by permitting assistance when severe financial conditions exist, and by increasing the forms of assistance to include deposits in the institution and a purchase of its securities.

The bill supplements existing authority by providing for emergency acquisitions of insured institutions that are eligible for FSLIC assistance. After soliciting bids from prospective qualified purchasers, if the bid that results in the lowest cost to the FSLIC is from an in-State, same-type institution as the failing institution, the in-State, same-type institution would be the acquirer. If such an institution is not the lowest bidder, all persons who submitted bids within 15 percent or $15 million of the lowest cost first bid may submit new bids. After rebidding, the FSLIC is directed to authorize transactions considering the following priorities: in-State, same-type institutions; in-State, different type institutions; out-of-State, same-type institutions; and out-of-State, different type institutions. In the case of minority institutions, the FSLIC shall seek to preserve their minority character by soliciting additional bids from other minority controlled institutions prior to giving consideration to the other tiers. In addition, when considering out-of-State bids, priority consideration is required to be given to bids from institutions in States adjacent to that of the institution to be acquired. In considering authorizations, the FHLBB is directed to give consideration to the need to minimize the cost of financial assistance and to the maintenance of specialized institutions.

In the case of a State-chartered institution, before proceeding with the bidding process, the FSLIC must consult with the appropriate State regulator. If the acquiring institution is a bank holding company, FSLIC must also obtain the approval of the Federal Reserve, and the bill permits the FRB to dispense with notice and hearing in the case of such emergency acquisitions. In addition, the future branching capabilities of a thrift acquired by an out-of-State bank or bank holding company are subject to national bank branching restrictions.

The need for FSLIC assistance for troubled mutual institutions will be reduced by a provision authorizing FSLIC to permit any mutual thrift to obtain a Federal stock charter, notwithstanding any other law, as long as that institution is in receivership, has contracted to receive FSLIC financial assistance or is under threat of instability because of severe economic conditions. In the case of a Federal mutual savings and loan or savings bank, FSLIC may require the conversion to Federal stock charter.

Another provision allows the Bank Board to waive the requirement that Federal Home Loan Banks set aside a portion of net earnings to a reserve account. This will permit such institutions to pay dividends to members of the Bank system when severe financial conditions exist. FSLIC is also permitted to use its secondary reserve (premium prepayments) exactly in the manner it uses its primary reserve (its cumulative net earnings).

The Bank Board is also allowed under Part B to appoint the FSLIC as conservator or receiver of a State-chartered insured institution upon a determination that the institution is in an unsafe or unsound condition to transact business, has substantially dissipated its assets, or had assets less than its obligations. However, the Bank Board must seek written approval from the relevant State official prior to exercising such receivership authority, and FSLIC may act without such approval only if the State fails to act in a timely manner or FSLIC is appointed receiver by a pubic authority of an institution in default.

PART C: NATIONAL CREDIT UNION ADMINISTRATION AMENDMENTS

The National Credit Union Administration is given flexibility and authority to handle certain emergency situations. The NCUA Board can approve mergers or purchase and assumption transactions between two insured credit unions if one of the credit unions is insolvent or in danger of becoming so, if an emergency is found to exist, and if other reasonable alternatives are not available. The Board may also authorize a purchase and assumption arrangement between a failing insured credit union and any federally-insured financial institution. This authority exists without any restrictions as to field of membership or geographic area and permits other federally-insured financial institutions to purchase or assume the assets of a federally-insured credit union.

Additionally, the NCUA Board is authorized to act as a conservator of an insured credit union in order to protect the interests of the members, the assets of the credit union, and the share insurance fund. In the case of federally-insured State-chartered credit unions, the State credit union supervisor must be consulted at least 24 hours prior to NCUA's exercise of this authority.

PART D: SUNSET PROVISION

The emergency provisions contained in Title I sunset 5 years after the date of enactment. The provisions which sunset include those that provide the agencies with the authority, under specific emergency situations, to permit acquisitions of failing and failed institutions on an interestate and/or cross-industry basis; those that permit the FDIC to require, and the FHLBB to require and/or authorize, the conversion to a Federal stock savings bank or Federal stock association under certain emergency conditions irrespective of State law; those that permit the Federal Reserve Board to dispense with notice and hearing for bank holding company acquisitions of thrift institutions in emergency situations; and those that grant the FHLBB the authority to appoint the Corporation as sole conservator and receiver for State associations, under emergency situations, irrespective of State law. The emergency authority of the NCUA and its emergency conservatorship authority is also sunsetted.

TITLE II: CAPITAL ASSISTANCE

As discussed under Title I, the thrift industry has suffered heavy losses in the last two years which have caused significant erosion of the capital base of the industry as a whole. The problem is simply that the industry's cost of funds and operating expenses are more than the fixed yield on its portfolios. Until recently, thrifts have been legislatively required to invest almost all of their assets in fixed rate mortgages and securities. This inability to diversify their assets is a major reason for the present condition of the thrift industry, and it is dealt with in Title III by expanding the lending and investment powers of thrifts.

However, the industry's narrow asset authority is not the only reason for its present plight. Throughout most of the 1970's, the general economy, the structure of the financial industry, and the relatively low interst paid on savings accounts have combined in such a way so as to encourage many thrifts to expand without proper regard for long-range operating cost controls. Today, technological advances, high interest rates and the increasing competition for savings dollars have placed thrifts in an environment where their cost of funds is rising faster than the yield on their assets, and they are unable to cover their operating expenses. Thus, they are losing money and net worth is eroding. In 1981, savings and loans and mutual savings banks, combined, lost more than $5 billion of combined net worth.

It is unlikely that this problem will disappear as interest rates decline. Savers are demanding, and will continue to demand, a fairer return on their savings, and increasing competition for credit business will make it impossible to pass on excessive operating expenses in the form of higher lending rates. Thus, a large segment of the industry will need time not only to restructure their loan portfolios in light of the new asset powers contained in Title III of this bill but also to streamline their existing operating procedures. The capital assistance program authorized under Title II serves this purpose. It provides thrifts with the time needed to work out their problems and to take advantage of their new powers while giving the federal insurance agencies more flexibility in dealing with troubled institutions.

This title authorizes the FSLIC and the FDIC to utilize their respective insurance funds to administer a program whereby qualified federally-insured institutions may exchange their own capital instruments for promissory notes issued by the federal insurance agencies. The exchange of such notes is intended to partially offset current losses and shore up the net worth of qualified institutions.

While the program is designed to assist a broad range of insured institutions having net worth equal to or less than 3 percent of assets, institutions may qualify for aid only after meeting certain statutory criteria. Institutions must have a positive net worth for at least six months after the purchase of capital instruments and institutions are required to comply with all terms and conditions established by the appropriate federal insurance agency. The agencies are given the discretion to take into account the particular circumstances and conditions of each institution. However, neither the FSLIC nor the FDIC shall arbitrarily or capriciously establish significantly different terms and conditions for its insured institutions when such institutions' conditions and circumstances are reasonably similar. Furthermore, the federal insurance agencies shall not require the execution of a merger resolution or agreement to reorganize as a condition of participation in the program, if after the receipt of such assistance the institution would have a positive net worth for at least nine months.

The bill provides for state law overrides in two areas. One provision ensures that the captial notes issued will be treated as net worth and that state chartered institutions will be able to continue to operate and pay dividens. A second provision exempts qualified institutions from state and local franchise taxes so long as they have notes outstanding.

State consultation, as well as consultation with the appropriate federal banking agency in the case of a commercial bank, is required before assistance is provided:

The initial formula for assistance is as follows:

Net worth	*Level of assistance*
3 percent or less	30 percent of period loss.
2 percent or less	40 percent of period loss.
1 percent or less	50 percent of period loss.

The program provides thrift institutions with additional time to restructure their portfolios and streamline their operating costs and facilitates the regulators handling of troubled institutions under the emergency powers of Title I. Since only partial assistance is provided, marketplace discipline would continue to provide additional incentives for institutions to reduce their operating expenses.

The bill contemplates that the Title II authority for institutions' issuance of "capital instruments" and "consideration" to be paid by the appropriate federal insurance agency will be used to establish, on a broader scale, an exchange of instruments substantially similar to Income Capital Certificate ("ICC") and promissory note transactions which have been used by FSLIC to provide assistance to financially troubled associations under existing authority.

The Income Capital Certificates are a unique form of equity security designed as a hybrid between traditional debt and equity securities. Their debt-like features are that they are fixed income securities and do not allow the holder to participate in the growth of the firm. The ICC provides for annual income payments, similar to a coupon dividend rate on preferred stock, and annual redemption payments. The annual income payment rate is based on the weekly auction rates during the preceding year for 26-week U.S. Treasury Bills. However, like equity, the annual income payments (and redemption payments) need not be paid in the current year. Such payments only become due if the issuing savings and loan association has net income and if certain net worth standards are met. Payments on the ICC's are further limited to a specified percentage of net income. Unpaid dividends and redemption payments accumulate and are usually paid off before common stock dividends can be declared. Another equity-like feature of the ICC's is that the payment of dividends by the institution, unlike interest, would not be a tax deductible expense for the institution.

In structuring the ICC's, the FHLBB consulted with two national independent public accounting firms to ensure that ICC's would qualify as equity on the balance sheet of the issuing association in accordance with generally accepted accounting principles. They qualify as equity primarily because the Income Capital Certificates can be repaid only to the extent of a specified percentage of new capital received by the issuing association from any net income or other sales of equity securities.

ICC's are purchased by the FSLIC with a transferable, intermediate term (five-year) promissory note of the FSLIC. Interest on the FSLIC notes is payable semiannually at a rate for each semiannual period equal to (i) the average during the last month of such period of the arithmetic average of equivalent bond yields for the most recent U.S. Treasury five-year note plus (ii) one-half of the difference between the average of the daily closing equivalent bond yields on new Farm Credit consolidated obligations and Federal Home Loan Bank System obligations issued within the last three months of such period and the arithmetic average equivalent bond yields on U.S. Treasury obligations of the same maturity during the same period.

Based upon the advice of several national firms of independent public accountants and investment bankers, it is also expected that the FSLIC notes will be treated as cash equivalents on the balance sheets of the savings and loan associations to which they are issued in accordance with generally accepted accounting principles, in an amount equal to the fair market value of the notes at the date of issuance. Inasmuch as the FSLIC notes are eligible collateral, at face value, for FHL Bank advances, the FSLIC notes also can be utilized by the recipient associations to satisfy regulatory net worth and liquidity requirements.

To date, ICC's have been issued mostly in conjunction with certain mergers known as "Phoenix plan mergers," where there have been several weak associations in an area for which there were no affordable alternatives. In this context, the ICC has proven an extremely cost-efficient method of net worth assistance.

The FDIC presently does not have the authority to assist troubled institutions unless such institutions are found to be essential to the community. Under existing statutory provisions, FSLIC has authority to provide cashless assistance to improve an institution's net worth in supervisory situations, but broad availability of such aid is arguably constrained by the statutory language that in essence allows FSLIC to provide assistance only to institutions in danger of default. The grant of discretion to FSLIC and the FDIC to offer such a program on a much broader scale is needed.

Neither the promissory notes to be issued by the federal insurance agencies nor the capital instruments to be issued by the institutions are described in the legislation. As noted earlier, the thrifts have been suffering an erosion of net worth—each dollar earning loss causes a dollar reduction in net worth. The promissory notes held by the institutions, when issued by the federal agencies, will be treated by federal and state regulators as assets on the institutions' books and likewise the capital instruments issued by the institution will be treated as equity or net worth of those institutions. To the extent that general creditors and the financial community as a whole recognize these capital instruments or ICC's as part of the institution's equity base, the institution's borrowing power and/or cost of additional debt could also be reduced. For both mutual and stock institutions, the classification of these capital instruments (ICC's) as equity by the regulators provides the institutions with the legal right to continue operations as long as the prescribed terms and conditions of the insuring agency are met. At the same time, the classification of such instruments as equity-like by the financial community provides them with additional funding flexibility in the private markets. Therefore, the actual design of the promissory notes and the capital instruments is left to the insurance agencies in order that they be given the flexibility to meet the needs and the concerns of the financial community.

Nevertheless, neither the amendments in Title I of this bill expressly allowing the federal insurance agencies to "purchase securities" under Section 406(f) of the National Housing Act or 13(c) of the Federal Deposit Insurance Act, nor the provisions in Title II permitting the federal insurance agencies to purchase "capital instruments," allow the purchase of voting or common stock by the federal agencies. To the contrary, such authority is not necessary. Also, the federal insurance agencies will have the necessary supervisory tools to protect the financial integrity of their respective funds while providing assistance which permits institutions to function as independent corporate entities. For example, the agencies, in providing assistance, may require covenants or agreements designed to protect their financial interest. Authorizing the acquisition of voting or common stock by the insurance agencies could lead to unwarranted quasi-nationalization of the financial industry. This would be contrary to the bill's intent which is to preserve thrifts as a viable part of the private segment of this economy.

The effect of the program should be to reduce the number of forced mergers and provide additional time for institutions to restructure their portfolios consistent with the new powers granted in Title III while maintaining marketplace discipline of operational costs. Additionally, implementation of the program will produce federal budget savings since the number of mergers requiring financial assistance will be reduced. For example, under a 9½ percent interest rate scenario, the Federal Home Loan Bank Board estimates that the program would prevent 119 additional institutions, with assets of $28 billion, from reaching negative net worth through 1984. Under any higher interest rate scenario, the effects of the program are even more dramatic.

TITLE III: THRIFT INSTITUTIONS RESTRUCTURING

In order to provide additional asset flexibility and earnings opportunities to thrift institutions in the long-term, Title III authorizes Federal savings and loan associations and Federal savings banks to engage in a broader range of lending and related investment activities. It also liberalizes the Federal chartering option for thrifts by allowing any savings and loan or mutual savings bank to obtain a Federal stock or mutual charter without regard to its present status. In addition to upgrading thrift structure, Title III includes provisions: mandating a new deposit instrument for all depository institutions to enable them to compete effectively with money market funds; eliminating the statutory differential; and providing a compromise regarding the enforceability of due-on-sale clauses in mortgage contracts.

The need to restructure the thrift industry has long been recognized in the financial community and in Congress. It appears clear that defective structuring is a primary cause of the current economic vulnerability of thrifts. The high and volatile interest rates of recent years have illustrated starkly the inherent dangers of borrowing short and lending long at fixed rates. At the same time, competition for deposits has become increasingly fierce and expensive, due in large part to the rapid and enormous expansion of money market mutual funds.

The potential benefits to thrifts that can be gained by authorizing the powers contained in Title III are illustrated by the experience of state-chartered savings and loan associations in Texas, which have powers in the areas of commercial and consumer lending similar to those the bill would provide to Federal associations. This experience has been analyzed by the Federal Home Loan Bank Board in a recent staff study. The study disclosed that the average net returns on the non-traditional assets exceeded the average return on the conventional mortgage portfolio by the substantial margin of about 200 basis points. This contributed importantly to the fact that, for the period from 1977 through 1981, Texas state-chartered stock associations had an average before-tax return on assets of 40 basis points, compared to 33 basis points for federally chartered associations—a difference representing almost 10 percent of the Federal association's best annual return on assets. The study concluded that additional asset powers provide a valuable means for thrifts to diversity their portfolios, create a better match between the maturities of assets and liabilities, reduce interest rate risk and, most importantly, that Texas state-chartered associations have remained firmly committed to housing despite the opportunities for alternative investments. Nearly 80 percent of their portfolios, on the average, consist of mortgages or mortgage-backed securities.

The additional powers provided thrift institutions is a necessary complement to the temporary assistance programs provided in Titles I and II, and it is especially necessary to the housing industry. In testimony before the Committee during its November 1981 hearings on S. 1720, Secretary of the Treasury, Donald Regan, indicated that the temporary assistance and expanded asset powers:

> * * * provide for both temporary and long range solutions to the problems of the thrift industry. It keeps the industry alive, so that thrifts can get back into competition and get more funds into their respective institutions, and enables them to loan that money out again at a profit. So I think S. 1720 will help the housing industry. If you don't pass this bill, what is the alternative for the housing industry? What if we have no thrift industry at all? If we had none at all, what would the housing industry do? You have to have a viable thrift industry, and in order to have a viable thrift industry, you have to start with S. 1720.

The Secretary went on to indicate the following:

> I think that what Congress is trying to do is to save an industry rather than rescue it and still have it floundering. I think that if all Congress does is provide temporary solutions, the industry itself cannot plan for the future. The financial industry is in a changing mode. It is going to change even more over the next few years. To the extent that you do not allow the thrift industry to change with changing times, you do it a disservice, it is going to be left in the wake. I think that unless you expand the asset powers, unless you authorize additional earnings potential, you are not going to have that thrift industry in place. To the extent that the thrift industry is just being rescued from possible defaults, that isn't the answer for the housing industry. You want a strong industry in place when we emerge from the current economic condition.

Richard Pratt, Chairman of the Federal Home Loan Bank Board, has indicated on numerous occasions similar views to those of Secretary Regan. In his testimony before the Committee in May of this year, Chairman Pratt indicated that:

> The Bank Board is convinced that the current statutory asset constraints facing thrift institutions are simply inconsistent with the ability of those institutions to compete effectively in a marketplace characterized by payment of market rates of interest. Given that Congress has set in motion a deposit interest rate decontrol process, already substantially underway, that will eliminate all controls by 1986, it is imperative that thrifts receive asset-side empowerments capable of generating the earnings needed to support competitive rates. It is of particular importance that new powers be provided to enable thrifts to function as effective competitors during all phases of the economic cycle.

Andrew Carron, a Senior Fellow at the Brookings Institution and the author of a detailed study of the thrift industry, testified during the Committee's May 1982 hearings that:

> The new powers are vital to the future health of thrifts that survive the current transition problems. Although ex-

> panded asset powers are not a panacea for today's ills, they should be considered now as part of a plan to revive and restructure the thrift industry * * *.

Mr. Carron summed up his recommendations to the Committee by stating:

> I encourage the Committee to proceed with the three elements now before it: short-term assistance, regulatory flexibility, and expanded asset powers. Thus equipped, the regulatory agencies can provide the bulwark against which a revitalized thrift industry will be built.

Broadened asset powers for federal thrift institutions are also consistent with recently enacted state laws granting state-chartered thrift institutions broader powers. In fact, some states have adopted statutes much more aggressive than the changes which are contemplated in this bill. For example, Florida permits commercial lending and direct equity investments by state associations, and Massachusetts law phases in commercial lending for thrifts so that when Regulation Q and the differential are eliminated all of its state-chartered banks and thrifts will have equal investment and lending powers. With the increasing emphasis by states to liberalize thrift powers, the expansion of federal thrift powers contemplated by this bill will provide more competitive equality for federal thrifts in many locations, thereby preserving and strengthening the options implicit in the dual banking system.

In recognition of the expanded powers for thrifts, Title III amends the chartering and purpose provision of the Home Owners' Loan Act to indicate that the purpose of federal thrift institutions is to provide for the deposit of funds and for the extension of credit for homes and for other goods and services. The expanded powers contained in Title III include the following:

1. Demand accounts may be accepted from persons or organizations that have established a business relationship with the thrift institution; whereas, federal thrifts may now offer only NOW accounts or, in the case of federal savings banks, demand deposits to commercial lending customers. The intent of this provision is to permit all federal thrift institutions to offer checking accounts to their commercial lending customers. This allows the maintenance of a demand deposit even though a business customer with a credit relationship occasionally may not have an outstanding loan.

2. Loan to value ratios with regard to residential real property are eliminated and secured non-residential loans are increased to an aggregate of 40 percent of assets. Present law includes an extensive list of loan to value ratios and limits non-residential real estate lending to 20 percent of assets.

3. Investments are authorized in all types of state and local government securities. Present law restricts such investments to general obligations of state and local governments and to certain housing-related securities.

4. Secured or unsecured loans for commercial corporate, business or agricultural purposes are authorized. Such authority is phased in as follows—the aggregate amount of loans shall not exceed (i) for direct loans, 5 percent of assets for a savings and loan association

(7½ percent of assets of a savings bank) prior to January 1, 1984 and 7½ percent of assets of a savings and loan or a savings bank thereafter; and (ii) for participations or purchases, 5 percent of the assets of a savings and loan association or savings bank prior to January 1, 1984 and 7½ percent thereafter. Thus, no more than half the available investment basket can be used for loan originations with the remainder to be used for loan participations or purchases. Federal associations will be subject, in the exercise of this authority, to the same limitations regarding loans to a single borrower which are applicable to a national bank having the same total capital and surplus. Thus, assuming national bank lending limits proposed in the bill are adopted, a commercial loan by a federal association basically would be permissible as long as the association's total of Sec. 5(c)(1)(L) unsecured loans to that borrower did not thereby exceed 15 percent of the total surplus and capital of the association.

In agreeing to approve providing federal thrifts with the authority contained in Sec. 5(c)(1)(L), the Committee realizes that it is changing long-maintained competitive relationships, as well as providing thrift institutions with a tool that carries potential risks as well as benefits. The Committee has carefully considered the appropriate limits of commercial lending authority for Federal thrifts and believes that the percentage-of-assets limitations contained therein will permit institutions to adequately diversify their portfolios and remain profitable throughout business cycles. Accordingly, the Committee expects the percentage-of-asset limitations contained herein to be observed rigorously. In this regard, it is the specific direction of the Committee that commercial loans made (or purchased, or participated in) by a federal thrift's service corporation be counted in the Sec. 5(c)(1)(L) investment basket of such thrift. Of course, appropriate proportional adjustments should be made in the case of service corporations subject to multiple ownership of thrifts.

The aggregate commercial and agricultural loans authorized under this section are intended to include any overdraft loans on commercial demand deposits permitted under this bill. Thus, the aggregate limits are for the entire operation of the savings and loan association.

5. Consumer lending authority is expanded from 20 percent of assets to 30 percent of assets and authorizes investments in inventory and floor planning. With regard to the latter, the Committee intends that any inventory or similar financing be arranged in conjunction with extensions of consumer credit or, in other words, to facilitate the purchase by consumers of retail goods.

6. Investments are authorized in tangible personal property and in leasing operations in an amount up to 10 percent of the institution's assets.

By specifically approving certain expanded powers and activities for thrift institutions and by not authorizing the Federal Home Loan Bank Board to permit service corporations to engage in any new activities not previously authorized, the Committee intends that henceforth the FHLBB should not approve in the absence of clear and specific Congressional authorization any new regulation expanding activities of service corporations other than to permit service corporations to engage in activities permitted for federal thrift institutions.

The Committee is aware that the Bank Board presently is considering proposed regulations that would expand significantly the permitted range of activities for service corporations. In light of the specific additional powers authorized for savings and loan institutions in this bill, the Committee intends that the Bank Board shall withdraw and take no further action on the proposed regulations. Of course, Congress reserves the right to review activities previously authorized by the Bank Board.

Under Section 331 of the bill, federal thrift institutions are made subject to anti-tying restrictions generally comparable to those applicable to bank holding companies. The provision prohibits an association from conditioning the availability or the terms of credit, property or services on a potential customer's agreement to:

a. Obtain other credit, property, or services from the association, its service corporation or affiliates;

b. Provide other property, credit, or services to the association, its service corporation or affiliates; or

c. Refrain from obtaining other credit, property or services from a competitor of the association, its service corporation or affiliates.

In each case, the thrift institution may require appropriate conditions necessary for the soundness of the transaction. In sum, this provision is intended by the Committee to preclude anti-competitive practices where customers are required to accept or provide another service or product or to refrain from dealing with other parties in order to obtain the product or service that they want from the association.

Associations are chartered in order to provide credit to their communities. Under FHLBB regulations, they have been given the power to engage in real estate development, but should not use their financial power over credit to eliminate or undermine their competition in real estate development, for example, through lending made contingent upon a thrift institution's financial or investment interest.

It is the intention of the Committee to prohibit the linkage of the provision of credit to requirements that the credit applicant establish a relationship with the association's service corporations, or with a business being operated within the association, or with an organization that controls the association. The Committee does not intend to interfere with appropriate traditional lending practices. Nor does the language prevent customers from freely negotiating the terms of services based on the entire relationship between the customer and the association.

Private parties may enforce this subsection by obtaining injunctive relief for the threat of loss or treble damages for actual damages sustained by virtue of a violation of this subsection. In addition to the express remedies, private parties and the United States may bring actions under other federal and state laws to challenge violations of this subsection.

Section 334 of the bill limits interstate branching by Federal associations to those which have an asset composition such that they qualify for the benefits of the so-called "bad debt deduction" under the Internal Revenue Code. Furthermore, retention of out-of-State branches is contingent upon the Bank Board's determination that total assets attributable to branches in the foreign State are such that those branches, taken as a whole (assuming they otherwise would be eligible), qualify for the bad debt deduction. Federals with existing interstate branches are grandfathered, and State institutions with interstate branches that convert to Federal charters are likewise not forced to give up their out-of-State facilities. In addition, Federals are able to branch into those States that permit such penetration by out-of-state thrifts. The provision clarifies that fact that branches resulting from the extraordinary powers granted the FSLIC under Section 123 of the bill are not affected by the Section 334 limitation. Finally, the section allows the Bank Board to give Federals up to two years to dispose of illegal branches.

Section 335 of the bill limits the activities permissible for a savings and loan holding company and its non-S&L subsidiaries when the company's S&L subsidiary acquires an asset mix such that it no longer qualifies for the bad debt deduction. The activities thereafter permissible are those available to multiple savings and loan holding companies and their subsidiaries under 12 U.S.C. Sec. 1730a (c)(2). Affected companies are given three years to either come into conformance or sell the S&L subsidiary.

Congress in the enactment of Title III of the Depositiory Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-211) sought to provide a means whereby deposit interest rate ceilings would be eliminated over a six-year period to achieve the dual goals of providing depositors with market rates on all accounts and of providing competitive equity between depository institutions and non-depository institutions in the competition for savings dollars.

The intervening two-year period has been one of unprecendented high interest rates that have caused havoc to depository institutions due to the inability of their assets to produce profitable earnings. This problem has acutely affected the thrift institutions. In order to permit these institutions to structure their assets for greater earnings flexibility in volatile interest rate periods, this bill provides for new asset and investment powers for thrift institutions, including the authority to invest in commercial loans.

The havoc of high interest rates has not been limited solely to the asset side of depository institution balance sheets. The problems of interest rate ceilings remains an obstacle to depository institutions in their ability to compete. The continuing existence of Regulation Q disadvantages depository institutions subject to it in competing for consumer savings with less regulated intermediaries. Thus, the Committee is directing DIDC to create a new type of deposit instrument that will provide regulated depository institutions with the ability to compete directly with the money market mutual funds.

The statistical evidence of the competitive imbalance between regulated and unregulated depository institutions is measurable by the fact that the asset size of the money market mutual funds grew from $60.9 billion in March, 1980, to $203.3 billion in June, 1982, an increase of over 230 percent. The Committee is providing a legal prescription to the DIDC whereby a new category of deposit accounts would be provided to all depository institutions within 60 days after enactment of this law.

The Committee recognizes that the bank regulatory agencies—the Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board—need some administrative flexibility in the administration of the account created. But in order to guide the DIDC in designing the regulations necessary to implement this provision, certain elements must be considered.

It is the direction of this Committee that DIDC create a new deposit account for use by regulated depository institutions (banks, mutual savings banks, savings and loan associations) which: (1) shall be available to all types of depository institution customers not later than 60 days after enactment of this law; and (2) shall be an FDIC or FSLIC insured deposit instrument that provides depository institutions with the ability to compete effectively with investment accounts that are offered by money market mutual funds of investment companies registered under the Investment Company Act of 1940.

The bank regulatory agencies must take into account in the design of the new instrument the fact that the most competitive features of the money market mutual funds are their low minimum balances, their high liquidity in terms of withdrawals and third party drafts, and the absence of reserve requirements on such funds (which gives them a cost advantage). Recognizing, however, that DIDC has the statutory responsibility for phasing out interest rate ceilings as rapidly as economic conditions warrant with due regard for the safety and soundness of depository institutions, DIDC should be guided by the consideration that any interest rate ceiling can become a floor regardless of the competitive circumstances facing a particular depository institution. Such a ceiling could cause institutions' costs to be higher at some periods of the interest rate cycle yet not competitive at other periods. The Committee is very concerned that imposing an interest rate ceiling on the new deposit instrument could interfere with the competitiveness of the instrument. In regards to the threshold denomination of such new deposit instrument, this Committee recognizes that many depository institutions and groups of such institutions strongly believe that the initial minimum deposit level should be set no higher than $5,000, and perhaps lower. In the opinion of this Committee, an initial minimum of no more than $10,000, or perhaps $5,000, would produce an account which would begin to permit institutions to compete effectively with the current offerings of money market funds. DIDC should give more credence to the views of the managers of depository institutions in determining this minimum. It should be remembered that many of these problems would not exist today if Regulation Q had been raised gradually over time as interest rates and inflation mandated.

Additionally, the account should have no minimum maturity and permit emergency access without the account being reservable as a transaction account. Under the Monetary Control Act and Regulation D, an account at a depository institution is a transaction account if it can be used as a routine matter to pay third parties or others. Therefore, an account is not a transaction account if the institution significantly limits the manner in which it can be used for transactions. An account is not a transaction account if it is accessible by no more than a combined total of three telephonic or preauthorized transfers per calendar month (or monthly statement cycle) to transfer funds to third parties or to another account. Similarly, an account is not a transaction account if withdrawals can be made only by the depositor appearing in person at the institution (or through an automated teller). Unlimited withdrawals also can be made by written or telephone instruction if the bank sends payment only directly to the depositor.

It is important to note that every account that is accessible by draft is a transaction account, even if a draft is never drawn on the account. An account also is a transaction account if the depositor can use a debit card to pay third parties from the account.

In addition to mandating a new deposit instrument, the bill provides for the elimination of deposit rate differentials. The language of Public Law 94-200, which would maintain a statutory differential on pre-December 1975 accounts, is repealed. In its place, a directive is enacted authorizing DIDC to administer all differentials. This is the same authority DIDC now has over post-December 1975 accounts. Thus, DIDC has the authority to eliminate or to phase out any differential in its discretion. DIDC must phase out all differentials no later than January 1, 1985 on any account which carries a differential on July 1, 1982.

Any existing phase-out schedules for all interest rate differentials previously agreed to by regulation shall be maintained. No new differential on any category of deposit or account shall be authorized after January 1, 1984. It is the intent of this Committee that DIDC act as rapidly as possible. Any differential established after July 1, 1982 must be terminated on or before January 1, 1984. Finally, when any differential is removed from a deposit account and a ceiling is maintained, the ceiling must be no lower than the higher rate on such account as of the date of the elimination.

Preemption of State due-on-sale restrictions

The Committee finds compelling reasons for Congress to address the problems confronting lenders and borrowers, which have arisen from state actions restricting the enforcement of due-on-sale clauses in home mortgages.

For borrowers, due-on-sale restrictions provide an advantage for existing homebuyers at the expense of new homebuyers. New homebuyers pay for due-on-sale restrictions in one of two ways; either they pay an inflated price for an existing home with a lower interest rate assumable loan; or they pay a premium for a new loan for a new home, or an existing home without an assumable loan. In the first case, homesellers inflate the price of a home with an assumable loan to recover losses which result when they take back a second mortgage at a lower than market interest rate; or the price is increased to reflect the value of the assumable loan. In the second case, lenders charge a premium for new loans in states which restrict due-on-sale because earnings from the new loan must offset older loans (which can not be turned over when due-on-sale clauses are unenforceable), and originating an assumable loan rather than a loan with an enforceable due-on-sale clause poses a greater risk to the lender, requiring a higher price for the mortgage. Thus, restrictions on due-on-sale clauses generally help existing homebuyers to the disadvantage of new homebuyers. Due-on-sale restrictions also encourage risky lending practices, outside the realm of the traditional mortgage credit delivery system, which intensify default risks. Finally, studies have concluded that these restrictions may lead to the complete disappearance of that traditional mainstay of American homeowners—the long-term fixed rate mortgage.

For lenders, due-on-sale restrictions further extend the lives of older low interest mortgages, and prevent lenders from increasing the yields on those loans at the time the property is transferred. A recent Due-on-Sale Task Force assembled by the Federal Home Loan Bank Board concluded that the imposition of due-on-sale restrictions nationwide would create, within two years, annual losses of $600 to $800 million for federal savings and loans, and $1.0 to $1.3 billion for all federal and state savings and loan associations.

Due on sale restrictions also adversely affect secondary mortgage markets, which rely on uniform, homogenous mortgage documents to efficiently operate and provide mortgage money for lenders and homebuyers. State due-on-sale restrictions have caused the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Corporation to alter their investment practices in several states.

Finally, the recent Supreme Court decision in *Fidelity Federal Savings and Loan Association* v. *De La Cuesta*, upholding the right of federal savings and loan associations to enforce due-on-sale clauses, significantly disadvantaged state chartered and other lenders, and created uncertainty among homebuyers and sellers regarding the enforceability of due-on-sale. The pre-emption of state due-on-sale restrictions will place all lenders on a more competitive footing, and eliminate the confusion surrounding enforceability of due-on-sale.

Title III, Part C provides a federal preemption of state laws and judicial decisions which restrict the enforcement of due-on-sale clauses in real property loans, except for loans originated or assumed during a "window period." A lender's right to enforce a due-on-sale clause, in any loan not subject to window period restrictions, would be governed by the terms of the loan contract, except in the case of nine situations delineated in the bill designed to protect consumers.

When enforcing their rights pursuant to a due-on-sale clause, the Committee strongly urges lenders and prospective homebuyers to negotiate assumption of an existing mortgage at the original contract rate, or at a blended interest rate. A blended rate—which is an interest rate between the lower contract rate and the higher market rate for newly originated loans—will often be in the best interests of lenders, homesellers and homebuyers, particularly during periods characterized by high interest rates. A blended rate mortgage benefits lenders by increasing interest income on an older loan, benefits homesellers by facilitating sale of a home, and benefits homebuyers by providing affordable, below market rate financing.

Window period loans

A blanket federal preemption of state restrictions on the enforcement of due-on-sale clauses would, however, have an unfair impact on those homebuyers who, despite the contractual terms of their mortgage contracts, relied on state due-on-sale restrictions and reasonably believed they had assumable loans. Therefore, a "window period" exception has been carved out of the federal preemption for mortgages made or assumed after state action prohibited the enforcement of due-on-sale clauses. The term "assumed" includes transfers of the liened property by assumptions, installment land sales contracts, wraparound loans, contracts for deed, transfers subject to the mortgage or similar lien, and other like transfers.

The window period begins on the date the state law prohibited "the unrestricted exercise of due-on-sale clauses upon outright transfers of the property." [1] In states with judicial restrictions which purport to retroactively restrict due-on-sale enforcement, the window period will not begin until the date of the judicial decision. The window period ends on the date of enactment of this legislation.

State statutes,[2] constitutional provisions, or judicial decisions[3] which restrict enforcement of due-on-sale clauses constitute state action, triggering the creation of a window period.

Only judicial decisions by the highest court of the State (or if the highest court has not so decided, a decision by the next highest appellate court resulting in a final judgment if such decision applies statewide) will create a window period for that State. The reference in the bill to decisions by "the next highest appellate court * * * which applies statewide" is designed to address the unique situation of the State of Michigan, where the Court of Appeals has acted, in a decision which applies throughout that State, to restrict the enforcement of due-on-sale clauses. Although the decision was not issued by the Michigan State Supreme Court, Michigan has been clearly recognized as a jurisdiction which prevents the unrestricted exercise of due-on-sale clauses, and therefore the Committee believes that the Michigan appellate decision should trigger the beginning of the Michigan window period. Those states having judicial decisions which do not apply statewide, such as New York and Florida, will not be window period states.

---

[1] *Fidelity Federal Savings and Loan Association* v. *De La Cuesta, U.S.S.Ct.* (No. 81-750, June 28, 1982) fn. 24. For the purpose of identifying the beginning date of the window period, especially where numerous court cases address the due-on-sale issue, the Committee finds instructive the following analysis by the Supreme Court on California law: Not until Wellenkamp was decided in 1978 was a lender's right under California law to accelerate a loan in response to an outright transfer limited to cases where the security was impaired. The California Supreme Court's prior cases, which forbade the automatic enforcement of due-on-sale provisions when the borrower further encumbered the property securing the loan, *La Sala* v. *American Savings & Loan Assn.*, 5 Cal. 3d 864, 489 P. 2d 1113 (1971), and when the borrower entered into an installment land contract covering all or part of the security property, *Tucker* v. *Lassen Savings & Loan Assn.*, 12 Cal. 3d 629, 526 P. 2d 1169 (1974), permitted the unrestricted exercise of due-on-sale clauses in cases of outright transfers of the security. See 5 Cal. 3d, at 880, 489 P. 2d, at 1123; 12 Cal. 3d, at 637–638, 526 P. 2d, at 1174–1175.

[2] To the best of the Committee's knowledge, the following states have adopted laws restricting the enforcement of due-on-sale clauses: Colorado, in 1975; Iowa, in 1979; New Mexico, in 1979; and Utah, in 1981. Georgia and Minnesota also have adopted laws on the subject, but it is unclear from reading them just what restrictions, if any, they impose on the enforcement of due-on-sale clauses. The highest courts in those states could be the final arbiter of the impact of those laws.

[3] To the best of the Committee's knowledge, the highest courts in the following states have placed restrictions on the enforcement of due-on-sale clauses in their states: Arizona, in 1978; Arkansas, in 1972; California, in 1978; and Michigan (by an appellate court with statewide jurisdiction), in 1977.

The Supreme Courts of Illinois and Mississippi appear to leave the door open not to enforce due-on-sale clauses under some circumstances.

The Committee has not discovered court decisions in any other states that would appear to trigger a window period. In several states, such as New York and Florida, appellate courts whose jurisdiction is not statewide have imposed restrictions on due-on-sale clauses, but the window period in this bill is not triggered by lower court decisions, as the Committee was concerned with respecting the integrity of decisions that had statewide impact.

Of course, just what the state law is in any particular state would be determined by the highest court of that state.

The Committee has not formed an opinion with respect to the decision taken by the Supreme Court of the State of Wisconsin in 1973.

Most commonly, statutes or judicial decisions prohibit the exercise of due-on-sale clauses by limiting their enforcement to instances where the lender's security interest in the property collateralizing the loan will be impaired, or where the person assuming the loan fails to meet customary credit standards. Other statutory restrictions prohibit the full exercise of due-on-sale clauses by limiting the fee lenders can charge for transfer of a loan, or by restricting or disallowing interest rate changes during the life of the mortgage, or upon assumption of the mortgage loan.

Window period loans originated by non-federally chartered lenders would be subject to applicable state law for three years, unless the State legislature acts within the 3 year period to regulate such loans in a different fashion. This three year period, which begins with the enactment of this legislation, provides State legislatures, in those states with window periods, with the opportunity to review the impact due-on-sale restrictions have imposed on non-federally chartered lenders, consider the rights of consumers who received assumable mortgages under state laws or court decisions restricting due-on-sale enforcement, and to formulate an alternative approach to window period loans if they so desire. For example, to the extent of their authority to so act under State law, a State might repeal existing due-on-sale restrictions. A State might also lengthen the time that State due-on-sale restrictions would apply to window period loans, or authorize blended rates for these loans. State legislatures may not expand the types of loans to which the window period applies—e.g. a state which presently restricts due-on-sale enforcement for single family loans (or nonfirst lien consumer loans) but not multifamily loans could not expand that restriction to apply to multifamily loans. States which do not have window periods cannot act to restrict due-on-sale enforcement; and States which do have window periods may act only with respect to window period loans. If a State takes no action during the three year period the federal preemption would become effective thereafter and due-on-sale clauses in window period loans would be enforceable.

Window period loans originated by national banks, and federally chartered credit unions, would be subject to applicable State law for three years, and after three years due-on-sale clauses in those loans would become enforceable, unless the Comptroller of the Currency or the National Credit Union Administration Board act within the three year period to otherwise regulate such loans. The Comptroller of the Currency, acting under the authority of the National Banking Act, and the National Credit Union Administration Board, acting under the authority of the Federal Credit Union Act, may issue regulations covering window period loans originated by national banks and federally chartered credit unions. The question of whether these federal financial regulatory agencies have statutory authority to regulate retroactively is not addressed in this legislation.

Lenders have the right to require transferees of window period loans to meet customary credit standards which are applicable to loans secured by similar property. A lender, therefore, could require customary credit information and completion of its customary credit application upon transfer of a window period loan, even though state due-on-sale restrictions would prevent acceleration of, or a blended rate for, that loan.

Finally, the Committee believes that it would be unfair for lenders originating loans in states which have due-on-sale restrictions to retroactively enforce due-on-sale clauses for property sales which occurred before the date of enactment of this legislation. Therefore, lenders who may be authorized to enforce due-on-sale clauses in window period loans by virtue of state legislative action, or by action of a federal regulatory agency, can only do so with respect to sales and real property transfers which occur after passage of this legislation.

The United States Supreme Court, in *Fidelity Federal Savings and Loan Association* v. *De La Cuesta,* (No. 81-750, June 28, 1982) recently upheld the right of federally chartered savings and loan associations and federal savings banks to include and enforce due-on-sale clauses pursuant to a 1976 regulation issued by the Federal Home Loan Bank Board. Hence, the due-on-sale practices for federally chartered thrifts, for loans originated by those thrifts, will continue to be subject to the Federal Home Loan Bank Board's exclusive regulatory authority. The identity of the lender at the time the loan was originated determines whether or not a loan is subject to window period restrictions. For example, a loan originated by a state chartered savings and loan association which subsequently converted to a federally chartered thrift will be subject to state due-on-sale restrictions for three years, unless state action provides other treatment for such loan. Similarly, a loan originated by a state chartered bank, which subsequently converted to a national bank, will be subject to state due-on-sale restrictions for three years unless the state acts, and Comptroller of the Currency regulations concerning due-on-sale will not affect this loan.

Limitations on the enforcement of due-on-sale clauses

The Committee believes that it would be unfair and inappropriate for lenders to enforce due-on-sale clauses under certain circumstances—such as involuntary transfers resulting from the death of a borrower, transfers which rearrange ownership rights within a family, or transfers resulting from a separation or dissolution of a marriage. Similarly, further encumbrances of the property, such as second mortgages which are often used by families to send a child to college, or finance home improvements, will not trigger due-on-sale enforcement as long as the encumbrance does not relate to a transfer of rights of occupancy in the property. It is not the intention of the Committee that Section 341(d) of the bill facilitate financing arrangements which are designed to circumvent the legitimate right of a lender to enforce a due-on-sale clause, rather, the purpose of this section is to provide protections for consumers by prohibiting the enforcement of due-on-sale clauses where such enforcement would be inequitable. All loans, including window period loans, and all lenders, including federally chartered thrifts are subject to the limitations set forth in Section 341(d).

Nothing in Section 341 affects state laws with respect to personal property rights, state securities laws, or state foreclosure laws.

TITLE IV: PROVISIONS AFFECTING NATIONAL AND MEMBER BANKS

Several significant deregulatory provisions are included in the bill to revise or repeal, as appropriate, sections of the national banking laws that are obsolete and unjustifiably restrictive. These amendments, set forth in Title IV, effect changes that are long overdue. As the American Bankers Association testified before the Committee on October 20, 1981, these amendments would allow banks to respond better to changing economic circumstances and new marketplace competitors.

Most significantly, Sections 401 through 403 of the bill would substantially amend the arbitrary and inflexible laws affecting national bank lending and borrowing practices.

The constraining effects of the current legal lending limit have been worsened by the significant changes that have swept the banking environment over the past several years. Due to inflationary pressures, credit needs of many individual borrowers increasingly exceed the lending limits of small banks. Added flexibility is needed by smaller institutions, particularly in rural and agricultural communities, where too often small banks now have to turn away local borrowers. In fact, a recent ABA nationwide survey found that 6 percent of 2,400 rural bank respondents had loan applications from acceptable farm customers exceeding their lending limits.

In addition, most national banks are increasingly confronted with competitors not similarly constrained in their lending activities. These include non-banks such as the farm credit system, various government programs, and private companies that offer financial services. Moreover, even most state chartered banks have higher limits, and foreign banks generally have a much higher limit or are not subject to lending limits at all.

Similarly, real estate lending activities of national banks are currently restricted in a fashion which is at odds with today's marketplace. National banks must have adequate flexibility to meet the needs of first time homebuyers and to develop innovative mortgage instruments, such as graduated equity mortgages, reverse annuity mortgages and other types of new mortgage equity instruments. Such flexibility is essential for national banks to respond to the evolving demands of the mortgage market.

The nature of the banking business has fundamentally changed since the borrowing limits contained in current law were first enacted nearly 120 years ago. In particular, the development of new forms of bank liabilities, such as Fed funds, repurchase agreements, and standby letters of credit, and the emergence of modern liability management techniques have radically changed banks' balance sheets. Unable to fully accommodate these developments, the existing borrowing limitations have adversely affected the competitiveness of national banks in several states (including, most notably, New York) which have no similar limitations on state chartered institutions.

The amendments contained in the bill respecting national bank lending and borrowing, while noncontroversial, are greatly needed to assure greater flexibility to commercial banks in order to face their less regulated competitors.

Other significant statutory reforms contained in Title IV lighten the onerous burdens imposed on bank operations by certain provisions of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRA). Contained in Part B of Title IV of the bill, these amendments were first recommended to the Congress by the regulatory agencies nearly two years ago. At that time the member agencies of the FFIEC suggested certain largely technical amendments to the law. In December of 1981, additional changes were suggested by the Council.

Much of Part B is comprised of technical adjustments and minor modifications to the 1978 law.

Arbitrary dollar ceilings on loans by banks to executive officers for home purchase and educational purposes which no longer reflect the reasonable costs associated with such personal expenses are eliminated. Similarly, the statutory ceiling on loans to executive officers for other purposes is replaced by agency established standards thereby permitting the agencies greater flexibility to adjust to changing economic conditions.

The bill also deletes the detailed disclosure requirements mandated by FIRA affecting loans to bank directors and other officials. As the agencies have testified in no uncertain terms, the existing law results in the production of costly and voluminous reports by individuals and banks which have no supervisory worth. Such monitoring as may be necessary by the agencies to detect and correct insider misconduct can be better accomplished through agency developed reports and procedures than is being effected under the existing statutory provisions.

Lending limits

The bill amends 12 U.S.C §84 by raising the statutorily fixed lending limits imposed on national banks. Currently a national bank is not permitted to make loans to a single borrower in an amount exceeding 10 percent of its unimpaired capital and surplus. The bill would raise this ceiling to 15 percent. An amount up to 25 percent could be extended if the additional amount is secured continuously by readily marketable collateral for which a current price quotation is readily available.

Generally, this amendment is intended to provide smaller national banks with the ability to meet local credit needs and to compete with less restricted banks and non-bank competitors.

The Committee recognizes that many banks, particularly large institutions, maintain in-house ceilings below 10 percent, and that in some situtations concentrations of loans as large as that amount to related borrowers or companies may be imprudent. The Comptroller has adequate authority, however, to address such imprudent behavior by regulation or on a case-by-case basis. Examiner criticism and regulatory action may of course be justified in some circumstances regarding loans aggregating much less than the new statutory ceiling.

This section also confirms the Comptroller's authority to determine the circumstances in which a loan made to one borrower is attributable to another borrower for lending limit purposes.

The bill preserves the existing exceptions to Section 84 for various types of lending. Such exceptions, however, have been clarified and renumbered to reflect that the increased statutory ceiling absorbs several earlier express exceptions.

Borrowing limits

The bill repeals the arbitrary funding restraints currently imposed on national banks and thereby removes all regulatory constraints on national bank borrowings. It is intended to remove barriers to full participation by national banks in government funding programs. This provided banks with greater flexibility to fund their activities through modern techniques and to compete more effectively with state chartered banks and less regulated institutions. The bill does not affect the Comptroller's authority under other provisions of the national banking laws to adopt standards concerning safety and soundness including authority under the Financial Institutions Supervisory Act of 1966 to limit bank transactions in particular cases.

Real estate lending

The bill simplifies the real estate lending authority of national banks by deleting rigid statutory limitations. Section 403 is intended to provide national banks with the ability to engage in more creative and flexible financing, and to become stronger participants in the home financing market.

Bankers' banks

The bill authorizes the Comptroller to charter "bankers' banks", limited charter institutions to be owned exclusively by depository institutions to provide services solely to depository institutions and their directors, officers and employees. A national bank would be permitted to own stock (not in excess of five percent of the voting shares) in federal and state-chartered FDIC-insured bankers' banks and in bank holding companies that own or control such bankers' banks, provided that all subsidiaries of such companies provide services only to depository institutions.

Federal chartering is intended to facilitate the formation of these jointly-owned banks by providing uniformity in supervision, minimizing duplication of regulation, enhancing competition, and providing greater flexibility to bankers in different states to meet their common service needs.

The bill also grants to the Comptroller express rulemaking authority with respect to the chartering and operations of national bankers' banks. Statutory restrictions applicable to other national banks may be waived if incompatible with the operation of a bankers' bank.

The Comptroller's enforcement authority with respect to limited charter institutions is revised by the bill to reach bankers' banks and trust companies expressly. Such institutions shall be subject to the cease and desist, removal and other enforcement authority of the OCC.

The bill authorizes bankers' banks, whether state-chartered or nationally chartered to establish the bank holding company form of organization if they so desire.

Name or headquarters change

The bill eliminates the requirement that a national bank obtain the formal approval of the Comptroller to relocate its headquarters to any already approved branch located within the same city, town or village. At present, OCC is required to approve all relocations of a national bank's headquarters office. Agency and shareholder approval would continue to be required for any other move within or outside the community. Proposed relocations are limited to within 30 miles of the municipality of the bank's existing main office.

Comptroller approval for bank name changes also will no longer be required. There exists little supervisory interest in the name of a particular national bank. Federal approval procedures are to be replaced by a simple notice requirement. Any confusion between bank names shall be resolved under other laws, including the Federal Lanham Act and state statutory and common law principles of unfair competition.

Venue

The bill repeals the existing special venue provision for national banks except in cases involving a closed bank or FDIC receivership. In other cases, judicial venue will lie in the appropriate federal, state or local court, as determined by other general venue statutes.

The special venue provision was originally intended to prevent inconvenience and the interruption of business that might occur if centrally located bank records were sent to distant courts. Technological developments have now surpassed the justification for the old law. The likelihood of disruption to a bank is now no greater than to any other corporation, while the burden imposed on plaintiffs by the special venue law may be substantial.

Unclaimed property

The bill clarifies the Comptroller's authority to dispose of the unclaimed property acquired from receivers of national banks that failed before and during the pre-WW II Depression. This inventory is largely comprised of the contents of safe deposit boxes and other safekeeping arrangements.

The Comptroller is to publish a list of the last known owners of the property, the names and locations of the banks involved, and a general description of the various types of property that the OCC holds. This description is not to refer to specific items. After publication, a specific description of items is to be revealed only to their individual claimants. Individual claimants are to have access to information about the property to which they may have a right. No public disclosure is contemplated under the bill of any specific description or identification of particular items. Such information is to be exempt from the Freedom of Information Act.

A claimant may be an individual, entity or state asserting a demonstrable legal interest in the property, that is, more than an undocumented assertion of ownership. For example, a showing of rightful inheritance or, with respect to a state, the existence of an applicable state unclaimed property law will be necessary. The Comptroller shall informally decide the validity of all claims. Decisions on competing claims are to be based on the documentation submitted to the Comptroller. Any disputes concerning ownership or entitlement which continue or arise after the Comptroller's decision are to be resolved by the courts without regard to the Comptroller's decision or disposition of property. The Comptroller shall not be subject to any liability for any determination or any disposition of property. Any suit against the Comptroller with regard to unclaimed property must be resolved in the United States Claims Court.

A state may assert a right to possession of any unclaimed property during the twelve month claim period if it has a law, whenever adopted, that permits it to take custody of such property.

Any state with such a law shall be deemed to have provided adequate proof that it is entitled to such property, which was removed from a closed national bank located in that state, unless a claim by another person or entity to such property is determined by the Comptroller to take precedence. The Comptroller is not expected to require a state to bring suit to obtain possession or to provide further documentary evidence of entitlement. All claimants, including states, shall be required to comply with regulations consistent with the above.

Visitorial powers

The bill permits review of national bank records by state auditors and examiners. Such reviews of relevant documentation may be conducted solely to determine compliance with applicable state unclaimed property or escheat laws if such officials have reasonable cause to suspect that a bank has violated those laws. It is the expectation of the Committee that state examiners will accord bank records the same confidentiality required of national bank examiners under federal laws.

A state's unclaimed property or escheat law will be deemed applicable, for the purposes of 12 U.S.C. § 484, if it permits the state to claim or take custody of funds in possession of national banks the owners of which have failed to make claims for a specified period, and it expressly grants to the state the right to examine the records of holders of unclaimed property.

Bankers' acceptances

The bill increases the maximum allowable ratio of bankers' acceptances to capital and surplus from the current 50 percent (100 percent with Federal Reserve Board approval) to 150 percent (200 percent with Federal Reserve Board approval). Banks would be allowed to subtract participations from the overall acceptance-to-capital ratio limitations. Also, branches and subsidiaries of foreign banks subject to reserve requirements operating in the U.S. acceptance market would be brought under the ratio setting control of the Federal Reserve Board.

The bill provides an important additional source of financing for exports without any adverse consequences. It is widely recognized that bankers' acceptances are considered to be the highest quality form of obligation, from the perspective of both the bank that provides the financing and the purchaser of the acceptance from the bank.

Liberalization of the acceptances limitations would have five principal benefits. The first benefit would be the enhanced ability of a regulated sector of our economy, member banks, to compete with unregulated credit sources. Many customers who do not, but for various reasons would like to, obtain bankers' acceptances will usually obtain funds through sources of credit that are presently unregulated, such as commercial paper. In addition, acceptances are available from foreign banks which generally do not have any limitations on the acceptances that they create abroad in their own markets. Relief from the present limitations would permit member banks to compete more effectively with these unregulated credit sources.

Second, the availability of additional bankers' acceptance financing would make a significant contribution to the United States' position as a center of international trade and finance. Limitations are no longer reasonable in light of the growth of international trade and finance over the past 65 years and the competition arising from unregulated foreign banks.

A third, and related, benefit is that an increase in this low cost form of financing may help to reduce the trade deficit which the United States has been experiencing. The favorable impact should be felt on both the export and import side of the equation. Relaxation in the limitations should facilitate the ability of the United States exporters to obtain acceptances from banks not subject to limitations. It should also enable more United States importers to avail themselves of low cost acceptance financing, and thus, reduce the total cost of U.S. imports.

A fourth benefit would be of particular advantage to smaller U.S. exporters and agricultural concerns. Because demand for acceptance funding exceeds the present limitation, banks must allocate acceptance credit among customers. Other customers are either unable to obtain acceptance financing or must pay a premium for such financing. Again, relaxed limitations should increase the number of customers for whom acceptance financing is available.

Finally, eligible acceptances are considered to be one of the highest quality forms of obligation, from the perspective of both the bank that provides the financing and the purchaser of the acceptance from the bank. This high quality reflects the very nature of the acceptance. An acceptance created under section 13 of the federal Reserve Act is short-term (in no case may its maturity exceed 180 days from the time of acceptance) and is self-liquidating from the proceeds of the underlying transactions.

Banking affiliates

This section of the bill is the outgrowth of a proposal originally submitted by the Federal Reserve Board in 1978 in response to a request by the Senate Banking Committee for suggestions on how Section 23A of the Federal Reserve Act might be amended. Section 23A, which applies to all FDIC insured banks, is designed to prevent the misuse of commercial bank resources stemming from non-arm's length financial transactions with affiliated companies. The statute limits a bank's transactions with any single affiliate to 10 percent of the bank's capital and surplus and with all affiliates combined to 20 percent, and requires that all bank loans or extensions of credit to affiliates be fully secured.

The bill accomplishes three major objectives. First, it liberalizes certain unduly restrictive provisions in the existing statute while still protecting a bank from adverse transactions with affiliates. Second, several potentially dangerous loopholes are closed. Finally, it reorganizes and clarifies the statute to facilitate compliance and enforcement.

Currently, bank subsidiaries of a holding company system are defined as affiliates of each other so that transactions between such banks are restricted. The bill relaxes these restrictions in order to treat a multibank holding company more like a branch banking system. Specifically, the bill allows unlimited transactions (except for the purchase of low quality assets) among most bank subsidiaries in a holding company. This change relieves multibank holding companies of a significant regulatory burden without subjecting them to substantially greater risk. In order not to discriminate among multibank structures, the same exemption applies to transactions between a bank and a parent holding company that is itself a domestic bank. However, transactions between a bank and a parent holding company that is a foreign bank are restricted in the same manner as transactions between the bank and any nonbank affiliate. This provision recognizes that foreign banks can often engage in activities impermissible to domestic banks and thus should be treated like nonbank affiliates for purposes of Section 23A.

Presently, majority-owned subsidiaries of a bank are included as affiliates, whereas minority-owned subsidiaries are excluded. The bill no longer defines majority-owned subsidiaries of a bank as affiliates. A majority-owned subsidiary should be regarded as part of its parent bank and therefore, transactions between the two should be unrestricted. However, in order to prevent a bank from using its subsidiaries as a conduit to transfer unlimited funds to its affiliates, the bill combines the covered transactions of the bank and its subsidiaries in applying the quantitative limitations. However, the Federal Reserve Board will have the authority to relax this provision in cases where a banking organization does not have sufficient control over both a subsidiary of the bank and an affiliate of the bank to control transactions between the two companies.

At present, organizations that are sponsored and advised by a banking organization are not considered affiliates for purposes of Section 23A. However, in view of the difficulties which many bank-advised real estate investment trusts encountered in the mid-1970s, the bill includes as an affiliate any organization that is sponsored and advised on a contractual basis by a banking organization and any investment company that is advised by a banking firm.

Section 23A presently covers the purchase of only selected types of assets, allowing other types to be purchased in unlimited amounts. The bill covers all types of asset purchases by a bank from its affiliates, except for the purchase of real and personal property as may be specifically exempted by the Federal Reserve Board. This exception gives the Board authority to permit a bank to purchase from an affiliate certain types of expensive property, such as a computer or a building, since such transactions are not the type of transactions that Section 23A is designed to cover. Assets purchased by a bank from an affiliate are covered by the quantitative limitations of Section 23A as long as the assets are held by the bank. The dollar amount of the assets covered is determined by their value on the books of the bank.

Among the other transactions that are covered by the bill is the issuance of a guarantee, acceptance, or letter of credit on behalf of an affiliate, where the affiliate is the account party.

Section 23A now requires that bank loans or extensions of credit to affiliates be secured by stocks, bonds, debentures and other such obligations, or by paper that is eligible for rediscount or purchase by the Federal Reserve Banks. At the time the loan is made, the market value of the collateral must equal at least 100 percent of the amount of the loan. This list of eligible collateral severely limits a bank's lending to most affiliates because these companies typically do not possess the types of collateral required by the statute. Accordingly, the bill substantially liberalizes the list of eligible collateral to allow a bank to lend to its nonbank affiliates. To assure that banks are amply protected when these new types of collateral are used, the bill requires banks to maintain relatively high ratios of collateral value to loan amount.

In addition to the above provisions, the amended Section 23A requires that any covered transaction and any transaction specifically exempted between a bank and an affiliate be on terms and conditions that are consistent with safe and sound banking practices. This provision is designed to assure that such transactions will not have an adverse effect on the financial condition of the bank. This provision, however, would not require a bank to collect and maintain documentation on comparable transactions in the marketplace.

Finally, the bill exempts a number of transactions from the quantitative limitations and collateral requirements of the statute. Making deposits in an affiliated bank or affiliated foreign bank in the ordinary course of correspondent business and giving immediate credit to an affiliate for uncollected items received in the ordinary course of business are exempt. In addition, the bill authorizes the Federal Reserve Board to exempt certain other transactions as well as to issue further regulations to carry out the purposes of the statute.

Reserve requirements

The bill grants an exemption from Federal Reserve reserve requirements to all depository institutions having total deposits below a threshold amount. The threshold is initially set at $5 million and will increase each year by a percentage equal to the percentage increase in the total deposits of all depository institutions.

To become subject to reserve requirements, an institution would have to have total deposits above the then current threshold for two consecutive quarters. The exemption would become effective 60 days after enactment of the bill.

Real estate holdings of national banks

The bill excepts certain real estate (including oil and gas and other subsurface rights and interests) from the general five-year holding limitation for national banks. Exempt real estate must have been valued at or near zero since December 31, 1979, and earnings from such holdings must be separately disclosed in the annual financial statements of the bank. The exemption is contingent upon the authority of state banks to retain such holdings under state laws.

Insider loans

The bill amends various provisions of federal banking laws that rigidly restrict loans to bank executive officers. The arbitrary statutory limits on real estate loans and on loans for educational purposes are deleted. The similar restriction on loans for other purposes is replaced with authority for the bank supervisory agencies to establish, by rule or regulation, such limits as appropriately reflect current economic conditions. The Committee intends that the agencies establish similar such limits for their respectively regulated institutions. In addition, cumbersome reporting requirements affecting loans to executive officers are repealed as unnecessary in favor of alternative agency examination and reporting requirements.

Other provisions of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 that limit loans to bank insiders and prohibit preferential loans are preserved to prevent insider abuses.

The arbitrary $25,000 threshold amount above which loans must be approved by the bank's board of directors is deleted. Instead, the supervisory agencies are authorized to set an appropriate threshold amount by regulation and again, it is expected that the agencies will set similar thresholds. In addition, a bank's board may establish a committee composed of its members to approve such loans.

These sections also amend the Federal Reserve Act to provide that the insider loan restrictions do not automatically apply to officers, directors or shareholders of all subsidiaries of a bank's parent holding company.

Disclosure of material facts

The bill repeals Section 7(k) of the Federal Deposit Insurance Act relieving all insured banks of the statutory burden of filing annually a list of principal shareholders and executive officers and the aggregate outstanding indebtedness of such insiders and their related interests to the bank. The agencies have testified that any benefit derived from reporting this aggregate information is minimal and outweighed by the burdensome cost of compiling and submitting reports. Potential abuses of insiders can be discovered through other supervisory reports and routine examination processes.

Foreign banks exclusion

The bill clarifies that foreign banks with U.S. branches are excluded from the provisions of the Federal Deposit Insurance Act affecting bank insider transactions. Although foreign parent banks are excepted, a U.S. branch itself shall be treated as a nonmember insured bank and remain subject to such provisions of the federal banking laws. This section does not diminish the Federal Reserve Board's residual supervisory authority over any U.S. activities of foreign banks.

Management interlocks

The bill amends the procedural provisions of the Depository Institution Management Interlocks Act by expressly providing to the Attorney General an enforcement mechanism; and by eliminating irrelevant statutory barriers to agency actions in the removal of a management official.

The bill amends the Interlocks Act so that cases initiated by or referred to the Justice Department may be handled as cases under the procedural provisions of the Clayton antitrust laws.

The bill also amends relevant federal law to permit forced removal of illegally interlocking management officials. An agency could order a director or other management official in an illegal provision to be removed upon a showing that his or her position is in violation of the Interlocks Act without demonstrating that the likely effect of such service would be financially detrimental to the bank.

TITLE V: AMENDMENT TO THE FEDERAL CREDIT UNION ACT

The general purposes of this title are to grant credit unions certain long-needed flexibilities with respect to their internal operations; to give the National Credit Union Administration certain necessary additional authority and regulatory flexibility in meeting the agency's responsibilities to supervise and insure credit unions; and to make certain important adjustments to existing credit union real estate and investment powers.

Federal credit unions, as member owned and member operated financial cooperatives, continue to play a vital role in the financial services system of this country. The provisions of this title will make many modifications to the credit union system which should result in even more efficient and sound system in the future. This is particularly important as credit unions continue to face increasing competition both from within and outside of the financial system; as they are forced to adjust to the economic turbulence of a recovery period which has seen a large number of plant closings and record high interest rates; and finally as they prepare themselves for a future certain to contain a more rapidly changing financial market place than ever previously expected.

One category of amendments in Title V would extend to credit unions and their boards of directors needed flexibility in their day to day operations and broader authority to meet the growing demands of today's competitive and fast-paced marketplace. Most of the proposals have been pending for a number of Congresses. Among these provisions are amendments to simplify the organizational process for credit unions, to permit Federal credit unions to schedule annual meetings at any time during the year, choose their own titles for board officers, and convert from Federal to state charter based on a majority of those voting, rather than a majority of members.

Amendments designed to clarify and somewhat broaden the authority of credit unions to handle their own affairs include permitting boards of directors to establish the par value of shares, raising the amount which directors and committee members can borrow without board approval from $5,000 to $10,000, making the establishment of a separate Credit Committee an option of the elected Board of Directors and more clearly enumerating the powers of the Board of Directors.

As credit unions commenced to put into operation the real estate powers granted under Public Law 95–22, they found that certain adjustments to these powers would be necessary in order to more easily enter the secondary market.

Therefore, minor changes and clarifications in the real estate provisions of the Federal Credit Union Act are granted in this title which would accord credit unions greater access to this market and equalize their authority with that of other institutions.

Several further amendments are needed at this time to provide credit unions with tools to compete more effectively with other institutions. For example, credit unions are granted similar authority to savings and loans to invest in state and local Government obligations and to issue mortgage-backed securities. They also are given needed business flexibility by authorizing them to make deposits in any Federally insured, state chartered bank, rather than just state chartered banks located in the same state in which the credit union does business.

Lastly, a number of amendments are necessary to enhance the National Credit Union Administration's flexibility in dealing with credit unions and correct inequities in present law.

An amendment would provide for equal insurance treatment of the deposits of state and Federal credit unions in a Federally insured credit union. Complex computations would be ended by another amendment eliminating partial year NCUA insurance premiums and rebates. Additionally, the board would be given important and long overdue authority to differentiate its regulatory treatment of corporate central credit unions (i.e. credit unions for credit unions) versus natural person credit unions.

Three amendments are included regarding the authority of the NCUA's Central Liquidity Facility. The CLF would be given an incidental powers authority which was omitted in its enabling statute. The Central Liquidity Facility also would be granted the status of Agent of the Federal Reserve System. Lastly, the NCUA Share Insurance Fund would acquire the ability to borrow from the Central Liquidity Facility if necessary.

In summary, Title V is necessary to help credit unions meet the challenges of today's rapidly changing and fiercely competitive financial market and to enhance the NCUA's ability to more fairly and effectively carry out its responsibilities.

TITLE VI: BANK HOLDING COMPANY INSURANCE ACTIVITIES

Under the Bank Holding Company Act, bank holding companies may operate non-bank subsidiaries provided two tests are met. First, the activities of the subsidiary must be "so closely related to banking as to be a proper incident thereto." Second, the performance of such activities by a bank holding company must reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. (Section 4(c)(8) of the Bank Holding Company Act of 1956, as amended.)

The Bank Holding Company Act is administered by the Federal reserve Board. In the years between 1956 and 1970, the Federal Reserve permitted multi-bank holding companies to engage in certain insurance agency and underwriting activities that were generally restricted to credit related insurance transactions. After the 1970 Bank Holding Company Amendments were enacted, the Federal Reserve adopted regulations and interpretations regarding the permissible insurance activities which were more definitive and, in certain respects, more restrictive than its previous insurance regulations and policies.

While the Federal Reserve's adoption of its insurance regulation in August 1971 was preceded by a hearing on the matter, additional hearings were requested by various insurance industry groups which were opposed to the Federal Reserve's proposals. In response to such requests, a series of hearings on permissible insurance activities were conducted before an Administrtive Law Judge in 1973. Following those hearings and a final Federal Reserve determination authorizing various insurance activities, the Independent Insurance Agents of America filed suit challenging the Board's findings as to what constitutes "closely related" insurance activities.

The Federal Reserve's actions were eventually upheld in part, overturned in part, and remanded in part. (*Alabama Association of Insurance Agents* v. *Board of Governors,* 553 F. 2d 224 (5th Cir. 1976), on rehearing, 558 F. 2d 729 (1977), cert. denied, 435 U.S. 904 (1978).) As a result of such litigation, bank holding companies and their subsidiaries could continue to offer the following insurance services:

1. Credit life and credit accident and health insurance sold in connection with extensions of credit by a bank holding company or its nonbank subsidiary. This type of insurance may also be underwritten by bank holding companies.
2. Property and casualty insurance sold, on an agency basis, in connection with extensions of credit or the provision of a financial service (such as mortgage servicing). Bank holding companies may not underwrite this type of insurance.
3. Insurance (liability, employee health, etc.) sold to banking subsidiaries of the bank holding company. This insurance cannot be underwritten by the holding company.
4. General insurance to the public in towns with under 5,000 citizens, so long as the parent bank holding company's principal place of banking is located in a town of less than 5,000.

Insurance activities prohibited as a result of the litigation or of independent Federal Reserve determination include:

1. "Convenience insurance" (whole life or other types of insurance products not necessarily connected to any specific loan) usually sold to customers of a bank holding company or its nonbank subsidiaries;
2. The sale of property and casualty insurance, fidelity insurance, or group life or health insurance for a bank holding company, any of its nonbanking subsidiaries, or employees thereof;
3. The sale of renewal insurance after a loan from a bank holding company nonbank subsidiary has been repaid.
4. The combined sale of mutual funds and insurance, that is, insurance premium funding; and
5. Underwriting life insurance not sold in connection with a credit transaction by a bank holding company or a nonbank subsidiary.

The principal effect of the Board's rulings and the court case has centered on the sale of credit related property and casualty insurance. The sale of credit life and credit accident and health insurance as well as the general sale of insurance in towns of less than 5,000 in population had already been permitted to national banks largely on the grounds that such services were generally not available through independent insurance agents. Thus, the sale of this type of insurance by a bank holding company involves no substantive expansion into the insurance business by banking organizations.

During the past several years, the Committee has held a number of hearings on legislation designed to restrict the insurance activities of bank holding companies. The basic thrust of such legislation has been to prohibit bank holding companies from selling or underwriting property and casualty insurance. In the 96th Congress, the House approved a bill, H.R. 2255, with provisions prohibiting property and casualty insurance activities, and the Senate Banking Committee reported out an amended version of H.R. 2255, but final Congressional action was not reached on such provisions.

General prohibition and exemptions

Title VI generally prohibits a bank holding company from providing insurance as a principal, agent, or broker. There are six exemptions to this general prohibition, resulting in the prohibition being principally applicable to the underwriting or sale of property and casualty insurance products. The exemptions establish a grandfather date for the continuation of previously authorized insurance activities, such as selling credit related property and casualty coverages, and permit bank holding companies to engage in, among other things, credit life, disability, and involuntary unemployment insurance activities and general insurance agency activities in towns of less than 5,000 people.

Exemption (A)—Credit life disability and unemployment insurance

The first exemption authorizes bank holding companies to act as underwriters, agents, or brokers with respect to credit life, credit disability, and involuntary unemployment insurance. These forms of insurance, generally underwritten as group policies covering certain classes of borrowers (for example, all borrowers of a particular institution), basically pay off outstanding loan balances in the event of a borrower's death, disability or involuntary unemployment.

Credit life and credit disability insurance activities have been permissible for banks and bank holding companies through the years. Since enactment of the Bank Holding Company Act in 1956, the Federal Reserve has permitted bank holding companies to engage in such activities.

Involuntary unemployment policies are relatively new and usually provide that, for example, in the event of a layoff or strike monthly payments are made on covered loans during the unemployment period until the loan amount is paid in full or up to the total amount of insurance coverage.

Exemption (B)—Finance companies

The second exemption would permit finance company subsidiaries of bank holding companies to sell property insurance on loan collateral. The insurance is required to be limited to assuring repayment of the outstanding balance of the extension of credit. The exemption is not intended to permit a finance company subsidiary to underwrite such property insurance.

The exemption is limited to property insurance sales on loans of $100,000 or less (as adjusted annually by the Consumer Price Index), except that such insurance may be sold in connection with loans of up to $25,000 (also adjusted annually by the CPI) used to finance the acquisition of mobile homes.

Exemption (C)—Towns of less than 5,000

The third exemption authorizes bank holding companies and their nonbank subsidiaries to continue to engage in general insurance agency activities in a place or town having a population of 5,000 or less (as shown by the most recent decennial census). Bank holding companies are presently permitted under Federal Reserve regulations to offer general insurance services in towns of less than 5,000, so long as the principal place of the holding company's bank business is also in a town of 5,000 or less. The exemption is intended to conform to that standard, as well as the authority in the National Bank Act (12 U.S.C 92) permitting national banks to engage in general insurance agency activities in communities of 5,000 or less.

This exemption also permits a bank holding company to engage in general insurance agency activities in a location which the holding company, after notice and opportunity for a hearing, demonstrates has inadequate insurance agency facilities. This will help ensure that insurance services are available to persons living in communities with limited or no insurance facilities.

Exemption (D)—Grandfather provision

The purpose of the amendment is to permit bank holding companies which have been engaged or have received approval to engage in the insurance business to expand such business, within reasonable limits. The amendment provides bank holding companies with enough latitude to grow and compete successfully without permitting unbridled expansion of grandfathered activities. Without providing such companies with a broadened ability to expand and grow, they would not survive long in a competitive environment.

The principal effect of the amendment is to allow a bank holding company or any of its subsidiaries which were engaged on October 7, 1981, in the sale of credit related property and casualty insurance to continue to sell such insurance.

To be engaged in such permissible grandfathered insurance activities means that the bank holding company and its relevant nonbank subsidiary or subsidiaries are acting in accordance with the applicable statutory and regulatory standards as of the grandfather date and judicial interpretations thereof.

While the amendment does restrict the locations and scope of grandfathered insurance activities, there is no limitation placed on increases in the volume of such insurance business which may be achieved by a holding company or nonbank subsidary.

The amendment also takes into account the possibility of new types of permissible insurance coverages being developed by authorizing bank holding companies to sell, as agents, new types of credit related insurance policies which are within the general categories of insurance they were offering on October 7, 1981.

To be within such a general category of insurance, the amendment requires a newly developed insurance product to either cover against "the same types of risks" or be "otherwise functionally equivalent" to the grandfathered insurance activity.

It is the Committee's intent that if a bank holding company or its subsidiary has obtained approval from the Federal Reserve to engage in the selling of credit related property and casualty insurance prior to the grandfather date, after such date it will be able to sell any newly created type of insurance policy which protects against the same type of risk or is functionally equivalent to such insurance. For example, if a bank holding company has been permitted, through the grandfather clause, to sell standard homeowner's property insurance in connection with mortgage loans made by a subsidiary of the holding company and, if in the future, a new type of homeowners insurance becomes available such as volcano incurance, the holding company would be permitted to expand its sales to include the new type of coverage in connection with its mortgage loans.

In other words, subsection (D)(ii) is intended to relate to new insurance products which may become available after Oct. 1, 1981 which are designed to protect the Bank Holding Company or its subsidiaries from risks associated with a loan transaction. Thus, ordinary life insurance and level term life insurance, for example, are not such new products or otherwise functionally equivalent to coverages sold or approved to be sold on or before Oct., 1, 1981 and would, therefore, not be authorized under this clause.

It will continue to be the responsibility of the Federal Reserve, however, to determine whether the sale of newly created insurance policies will protect against the same types of risks as those coverages prior to the grandfather date and will be permissible activities. Additionally, it will be the Federal Reserve's responsibility to determine whether new kinds of insurance coverages are functionally equivalent to existing kinds of coverages.

With regard to grandfathered insurance activities approved to be conducted on or before Oct. 1, 1981, the Committee intends that bank holding company insurance activities applications approved by the Federal Reserve on or prior to that date are eligible grandfathered activities, even though the activities have not actually been engaged in as of Oct, 1, 1981. This would permit, for example, a bank holding compnay which may have received approval to engage in property and casualty activities prior to Oct. 1, 1981, but which had not yet opened its property and casualty business, to begin and continue such activities. Of course, this is not intended to permit such a company to delay commencing activities beyond a date approved by the Federal Reserve.

To allow bank holding companies with grandfathered activities the latitude to expand such activities geographically, the amendment permits these companies to open new insurance locations in the home state of the bank holding company, in states adjacent to such home state, and in any state or states in which the grandfathered insurance activities were conducted on October 1, 1981.

Thus, for example, a finance company subsidiary of a bank holding company engaged in property and casualty insurance activities on Oct. 1, 1981 could offer such insurance with respect to loans it makes in the holding company's home state, or an adjacent state, and at new locations in any other state or states where the finance company has been engaged in such insurance activities.

The authority to engage in activities under the grandfather amendment only extends to the entity, be that the holding company itself or a subsidiary or subsidiaries thereof, which qualifies for the grand fathered activities status. This limitation is intended to prevent a bank holding company from transferring any grandfather authority among the companies within the holding company system. Thus, for instance, if the grandfathered insurance activity is the sale of property and casualty insurance in connection with loans made by a mortgage banking subsidiary of a bank holding company, that activity cannot be transferred to any other nonbank subsidiary of the same holding company or to any loans made by any other subsidiary.

Moreover, subsection (D)(i) is intended to relate to amounts and locations of the sale of types of insurance previously authorized. Consequently, subsection (D)(i) may not, for example, be construed as authorizing the sale by bank holding companies or their subsidiaries of ordinary life insurance or annuities where they previously had been authorized to sell credit related insurance.

Subsection (D)(i) shall not be construed as granting any expansion of general insurance agency activities which would not otherwise be permissible under the exemption in subparagraph (C) of the bill relating to sales of insurance in a place with a population not exceeding 5,000 or where the bank holding company has demonstrated that inadequate insurance agency facilities exist. Thus, for example, subsection (D)(i) is not intended to allow a bank holding company or any of its subsidiaries which may sell ordinary life insurance, annuities, or noncredit related property and casualty insurance in a place that has a population not exceeding 5,000 to expand to sell such life insurance, annuities, or noncredit related property and casualty insurance, at new locations in places having a population exceeding 5,000, or at existing locations when the population exceeds 5,000, according to the last decennial census.

The Committee notes that the bill simply enumerates the case in which insurance activities are "closely related" to the business of banking. Section 4(c)(8) of the Bank Holding Company Act which is amended by this bill continues to be subject to the provisions of section 7 of the Bank Holding Company Act which preserves to the States the authority to regulate bank, bank holding company and subsidiary activities. In treating a narrow aspect of bank holding company authority, the Committee has acted in accordance with long standing interpretation of these matters.

It was felt that specific language to reserve to the States current authority to limit or prohibit insurance activities of bank holding companies within their jurisdiction was unnecessary. Section 7 adequately retains the State authority to regulate insurance activities of bank holding companies.

Exemption (E)—Managing General Agents

The fifth exemption authorizes a bank holding company to supervise, on behalf of insurance underwriters, the activities of retail insurance agents selling fidelity insurance and property and casualty insurance to the bank holding company or any of its subsidiaries and group insurance that protects the employees of the bank holding company or any of its subsidiaries. The Committee understands that this exemption is applicable to certain situations in Texas, where state law permits bank holding companies to act as managing general agents over retail insurance agents who sell insurance coverages to the holding company. As managing general agent, a Texas bank holding company receives part of the retail agent's sales commission. Because of the fact that several Texas bank holding companies have been engaged in such activities and that there appear to be minimal financial or economic risks associated with the activities, the Committee agrees that this unique State law situation should not be unnecessarily preempted.

Exemption (F)—Small Bank Holding Companies

The sixth, and last, exemption permits bank holding companies, of which just under 2800 have assets of $50 million or less, to engage in any insurance agency activity, without regard to the bill's general prohibition. The only specific limitation placed on such permissible activities is that sales of life insurance or annuities is restricted to such activities permitted under exemptions (A), (B) or (C).

This general exemption for small bank holding companies is, of course, subject to regulatory standards that may be established by the Federal Reserve to ensure the financial stability and soundness of bank holding companies making use of this exemption. The Committee intends that this exemption cease if the value of a bank holding company's system assets exceed $50 million.

TITLE VII: MISCELLANEOUS

Title VII contains an amendment which exempts loan programs authorized under part B or E of the Higher Education Act of 1965, as amended, from the revised Truth in Lending regulations that become mandatory on October 1, 1982. The new Truth in Lending regulations, published in the April 7, 1981 Federal Register, commonly referred to as Regulation Z, were developed to promote the informed use of consumer credit by requiring disclosures about its terms and costs, and was issued by the Board of Governors of the Federal Reserve System to implement the Federal Truth in Lending and Fair Credit Billing Acts which are contained in Title I of the Consumer Credit Protection Act as amended (15 U.S.C. 1601 et seq.).

The Truth in Lending Act applies to each individual or business that regularly extends credit to consumers, which is subject to a finance charge or payable in more than four installments, and is primarily for personal, family, or household purposes. Consequently, the coverage, rather that the purpose of the law, has been the primary reason why the implementing regulations are extended to include student loan programs administered by schools, state agencies, or commercial lenders. In reality, however, the student loan programs, contained in the Higher Education Act of 1965, as amended, are already subject to statutory provisions and regulations that provide comparable disclosures and explicit controls over the issuance of loan proceeds to student consumers. Therefore, the Truth in Lending provisions and Regulation Z are duplicative and unnecessary. Loan programs authorized under part B which include the Guaranteed Student Loan and Auxiliary Loans to Assist Students programs and part E, which includes the National Direct Student Loan program, have specific statutes which govern interest rates, minimum repayments, accelerated payment conditions, late charges, grace periods, deferments, cancellations, and endorsements. Additionally, institutions and lenders who make loans under parts B and E are also subject to statutory disclosure requirements outlined in Sec. 433A and Sec. 463A, of the Higher Education Act governing Student Loan information.

These student loan information provisions will be further strengthened by provisions contained in S. 2582 which include disclosure of any loan origination fee or insurance premium paid by the student borrower. Consequently, all disclosures required under the Truth in Lending Act are currently being provided to students receiving loans under part B or E of the Higher Education Act of 1965, as amended. Therefore, the Committee believes that the exemption from Truth in Lending provisions for these student loans will help to eliminate duplicative paperwork for students, post-secondary educational institutions, state guarantee agencies and lenders while still providing all disclosures and protections to students that are currently required under the Act.

Title VII also contains an amendment to the definition of "creditor" in the Truth in Lending Act in order to remove "arrangers of credit" from the coverage of the Act and thereby relieve real estate brokers from the responsibility of the law's disclosures.

When the Truth in Lending Act was amended in 1980, the definition of "creditor" was altered in order to eliminate confusion in "multiple creditor" situations. However, as a result of that change, the Act for the first time appeared to impose disclosure responsibilities on those who arrange for credit extensions, whether or not there is a person who regularly extends credit participating in the transaction. Since the coverage of real estate brokers was clearly not the focus of the Committee when it began the task of simplifying the law in 1977, nor when it redefined "creditor", it is time the Congress indicates its intent with respect to the coverage of such individuals. In fact, the Federal Reserve Board in its implementing regulations has temporarily excluded real estate brokers and has specifically requested the Congress to indicate its desire on the issue.

Congress intended to "simplify" the Truth in Lending Act when it enacted the amendments in 1980. It would truly be inconsistent with that objective, if in the process of such simplification, 2 million new individuals would become subject to the Act's requirements for the first time. Such a dramatic increase in the coverage of the Act is clearly inappropriate, particularly in view of the limited benefit which would result. Such an expansion would impose a new and particularly onerous burden on an already burdened industry and would result merely in information being disclosed which is already in large part contained in the contract of sale, note and mortgage.

Therefore, the Committee believes it is essential to clarify this coverage issue and prevent similar questions from arising in the future by eliminating "arrangers of credit" from the Act's coverage and thereby limiting the law's application to actual professional extenders of credit.

The bill also contains an amendment making industrial banks and like type institutions eligible for Federal Deposit Insurance. Industrial banks, industrial loan companies, industrial loan and thrift companies, loan and investment companies are all names for state financial institutions which extend installment credit to consumers and accept some form of savings deposit from their customers. These institutions are chartered and supervised under state industrial banking or industrial loan laws. The purpose of these amendments is to permit this type of financial institution to be eligible for membership in the FDIC on the same basis as other state financial institutions which offer the same or similar services to the public.

Title VII also includes a provision permitting a one-bank holding company covered by the 1970 Bank Holding Company Act Amendments, which was required to divest its banking or impermissible non-banking activities as a result of that Act, but has not yet filed an irrevocable commitment to divest, to divest either activity no later than December 31, 1983. Additionally, there are amendments to the International Banking Act of 1978 to provide grandfather rights for the non-banking activities of foreign banks which had applied for but had not yet received approval to operate a U.S. branch on the date of enactment of the Act and to permit a foreign bank to own up to 45 percent of a U.S. non-bank affiliate (the current limitation is 25 percent). These provisions are limited in scope and applicability and do not affect the underlying restrictions of the International Banking Act.

The bill also contains an amendment to the 1980 Depository Institutions Deregulation and Monetary Control Act clarifying Congressional intent that State and general purpose local governments and their agencies are eligible to establish negotiated order of withdrawal (NOW) accounts. Presently, though lack of clarity in the law, only special purpose governmental units, such as school districts, can maintain NOW accounts. This problem was highlighted in late 1981 by two different interpretations of the law by the Federal Home Loan Bank Board and the Federal Reserve Board. The Bank Board took a broad view that the law extended NOW account privileges to general purpose local governments while the Federal Reserve Board adhered to a more narrow interpretation. Subsequently, the American Bankers Association obtained a court injunction blocking the Bank Board's ruling, leaving general purpose governments without access to NOW account benefits. Some idea of the impact of this clarification can be obtained by statistics indicating that had the roughly $11.3 billion of State and local funds held in demand deposits been placed in interest bearing NOW accounts, a minimum of $593 million in interest revenues would have been earned.

Title VII also contains two amendments relating to the Federal National Mortgage Association. The first authorizes FNMA to issue preferred stock on such terms and conditions as its board of directors shall prescribe, and makes any such preferred stock freely transferable. The ability to issue preferred stock would considerably enhance FNMA's flexibility in making financial arrangements.

The second repeals the provision that restricts the amount of subordinated obligations of FNMA that may be outstanding at any time to twice the amount of the corporation's capital, surplus and undistributed earnings. Removal of this limitation will allow the normal operation of the marketplace to determine the appropriate relationship between FNMA's subordinated obligations and the sum of its capital, surplus and undistributed earnings.

Title VII also clarifies the fact that bank service corporations can provide services not only to other "banks", but also to all other financial institutions that are subject to examination by a federal agency.

Finally, to banks that withdrew from the Fedral Reserve System between July 1, 1979, and March 21, 1980, the bill grants the same phase-in of reserve requirements that the Financial Institutions Deregulation and Monetary Control Act of 1980 gave to banks that were not Federal Reserve members on July 1, 1979.

SECTION-BY-SECTION SUMMARY

TITLE I: DEPOSIT INSURANCE FLEXIBILITY

Part A: Federal Deposit Insurance Corporation Amendments

Section 111: Assistance to Insured Banks

This section expands the FDIC's powers to assist troubled banks.

Present law allows the FDIC to provide direct assistance to a troubled bank (one that is closed or in danger of closing) only when the bank is essential to provide adequate banking service in the community. Present law allows the FDIC to give merger-related assistance only when such action will reduce the risk or avert a threatened loss to the Corporation. Under this bill, the FDIC may provide direct or merger-related assistance (a) to prevent the closing of any insured bank, (b) to reopen a closed bank, or (c) when severe financial conditions exist which threaten the stability of a significant number of insured banks or of insured banks possessing significant financial resources, if the FDIC's risk of loss would thereby be lessened.

With respect to direct assistance, present law permits the FDIC to assist by making loans to, or purchasing assets of, or making deposits in the insured bank. This section expands FDIC's power by authorizing FDIC also to purchase the securities of, to assume the liabilities of, and to make contributions to, any insured bank.

Merger-related assistance authority is expanded to include these same methods, as well as a guaranty to the assisting institution against loss by reason of the acquisition. Additionally, this section permits the FDIC to assist holding companies and FSLIC-insured institutions in acquiring failing FDIC-insured banks. Present law permits merger-related assistance only to FDIC-insured banks in acquiring failing FDIC-insured banks.

With respect to both direct assistance or assistance for a merger, the amount of FDIC assistance is limited to that necessary to save the cost of liquidation, unless the FDIC finds that the institution is essential to provide adquate banking service in its community, in which case the assistance limit does not apply. The FDIC is required to provide Congress, as part of its annual report, a summary of the total amount saved, or estimated to be saved, by FDIC's using the authority provided in this section.

Section 112: FDIC-Insured Federal Savings Banks

This section provides for the conversion of State-chartered savings banks insured by the FDIC into Federally-chartered savings banks and, in effect, creates a new institution, the FDIC-insured, FHLBB-chartered savings bank.

First, it authorizes the FHLBB to authorize conversion from State to Federal charter, so long as such conversion does not violate State law. The FHLBB will be the primary regulator of the institution. The FDIC will insure the deposits of any Federal savings banks chartered under this section, until such time as the accounts are insured by the FSLIC. The FDIC is authorized to examine any Federal savings bank it insures.

Second, the FDIC, in certain circumstances, could, in effect, compel the Bank Board to charter a Federal stock savings bank, pursuant to the Bank Board's rules and regulations. Such action would accomplish a conversion from mutual form to stock form when necessary to prevent a closing, to reopen a closed bank, or if the FDIC determines and the FHLBB concurs that severe financial conditions threaten the stability of the savings bank and such conversion is likely to improve the bank's financial condition. FDIC-initiated conversions from mutual form to stock form are authorized in these emergency situations, even if such action preempts State law.

FDIC approval is required before any Federal savings bank it insures can merge or consolidate with, or transfer assets to, or assume liabilities of, any bank, association, or institution that is not insured by the FDIC.

A Federal savings bank created under this section shall have the same authority with respect to investments, operations, and activities, and shall be subject to the same restrictions on branching, as would apply to it if it were chartered under any other provisions of the Home Owners' Loan Act of 1933.

Section 113: Conforming Amendments to the Federal Deposit Insurance Act

This section complements Section 112 as it contains technical and conforming amendments to the Federal Deposit Insurance Act necessary to cover the new institution, the FDIC-insured, FHLBB-chartered savings bank. It provides for FDIC access to examination reports and reports of condition, for removal of insurance in the event of unsafe or unsound condition, and that the FDIC shall be appointed receiver for a FDIC-insured Federal savings bank.

Additionally, this section amends the indemnification provisions of the FDI Act which require limited indemnification by FDIC to FSLIC when a FDIC-insured institution converts to a FSLIC-insured institution. Under this bill, the new institutions will be insured by the FDIC, until such time as the accounts are insured by the FSLIC. This section provides, therefore, that the indemnification requirement shall not apply to conversions, mergers, or consolidations after the effective date of this Act.

Section 114: Conforming Amendments to the Home Owners' Loan Act of 1933

This section contains amendments to the Home Owners' Loan Act of 1933 necessary to cover the newly-created Federal savings banks, including a provision requiring FDIC to be the receiver of closed FDIC-insured Federal savings banks.

Section 115: Conforming Amendments to the National Housing Act

This section contains amendments necessary to cover the new institutions, the FDIC-insured Federal savings banks. It provides an explicit basis for Federal savings banks to obtain deposit insurance coverage from the FSLIC. Also, it provides the FHLBB with the same supervisory powers with regard to a FDIC-insured federal savings bank that it has with respect to other federal associations.

Section 116: Extraordinary Acquisitions

This section allows closed insured banks with assets of $500 million or more; and insured mutual savings banks with assets of $500 million or more which are in danger of closing, to be acquired by out-of-State, as well as in-State institutions. Before authorizing such acquisitions, the FDIC is required to consult the appropriate State bank supervisory and may set aside objections only by unanimous vote of the Board.

In the case of a closed bank with total assets of at leat $500 million, the FDIC as receiver may sell the assets of the closed bank and arrange for the assumption of its liabilities, and in the case of an insured mutual savings bank with assets of $500 million or more which is in danger of closing, the FDIC may sell its assets and arrange for the assumption of its liabilities. The latter acquisition may be accomplished only if the appropriate Federal or State chartering authority and the board of directors of the failing bank have specified that the bank is in danger of closing and have requested FDIC assistance.

The FDIC may solicit offers from any prospective purchaser it determines is qualified and capable of providing the needed assistance, including out-of-State banks and bank holding companies. After the first round of bidding, if the bid that results in the lowest cost to the FDIC is not from an in-State like-type institution as the failing institution, all persons who submitted bids within 15 percent or $15 million of the lowest cost first bid may submit new bids. After the second round of bidding, the FDIC is directed to give consideration to the following priorities: in-State, same type institutions; in-state, different type institutions; out-of-state same type institutions, and lastly, out-of-state, different type institutions. In addition, the FDIC must give preference to institutions in adjacent states, if the FDIC goes outside the in-state bidding tiers. In considering authorizations, the FDIC shall give consideration to the need to minimize the cost of financial assistance and to the maintenance of specialized depository institutions.

Banks that are acquired under the section are permitted to retain existing branches, but otherwise shall be subject to national bank branching laws.

The FDIC must take into account the competitive implications of any sale when completing a transaction under this section. No sale may be made which would result in a monopoly or whose effect would be to substantially lessen competition, unless the FDIC finds the anticompetitive effects are clearly outweighed by the public interest in meeting the needs of the community to be served.

Section 117: FDIC Assessments

This section permits the FDIC to treat as an expense, and therefore deduct from assessments, the earnings it foregoes by extending assistance loans at rates below what the FDIC could have earned if interest had been paid on the loan during a calendar year at a rate equal to the average current value of funds to the United States Treasury for that calendar year.

Section 118: Waiver of Notice Requirements

Subsection (a) permits waiver of the notice and hearing requirements of the Bank Holding Company Act to allow the Federal Reserve to approve emergency, non-precedential acquisitions of thrift institutions by commercial banks, subject to the approval of the thrift's primary Federal regulator. Subsection (b) defines the term "thrift institution" for purposes of the Bank Holding Company Act to include a Federal savings bank. Subsection (c) is an explicit exception to the Bank Holding Company Act's prohibition on interstate holding company acquisitions in cases involving emergency transactions authorized by Section 106 of the bill.

Part B: Federal Home Loan Bank Board amendments

Section 121: Federal Stock Savings Institutions

This section allows the FHLBB to authorize (or in the case of a Federally-chartered association, to require) a mutual institution to become, or merge into, a newly-chartered, Federal stock association, regardless of other State or Federal law. These authorizations could be granted only with respect to: (1) an institution in receivership; (2) an institution that has contracted to receive FSLIC assistance; or (3) an institution the stability of which is threatened by the existence of severe financial conditions, provided the authorization is likely to improve its financial condition.

Section 122: Assistance to Thrift Institutions

Section 122(a) allows the FSLIC to provide assistance to insured institutions at a somewhat earlier point in their financial difficulties than is presently allowed under the threshold criteria that to receive aid, an institution must be in default or in danger of default. The amendment permits assistance in cases where severe financial conditions exist threatening the stability of a significant number of insured institutions, or of insured institutions possessing significant financial resources, where such assistance would reduce the threat to the FSLIC posed by institutions under such threat of instability. In addition, the amendment clarifies that assistance may take the form of deposits in the institution or of a purchase of its securities, as well as the current approach of making contributions or loans or purchasing the assets of the troubled institution. This section also allows the FSLIC to provide assistance to FDIC-insured institutions acquiring troubled FSLIC-insured institutions, and, in the case of extraordinary acquisitions authorized under Section 408(m) of the National Housing Act, to any acquiror.

Sections 122(b)–(g) provides the FSLIC with conservatorship/receivership powers over State-Chartered insured institutions approximately equal to those which it now has with respect to Federal Associations. While the FSLIC still could accept an appointment as receiver or conservator from a State authority, and operate according to its regulation, the FHLBB would be able to appoint the FSLIC as sole conservator or receiver of a State-chartered insured institution. This authority can only be exercised if the State official having jurisdiction over the institution gives written approval, except that such authority can be exercised without such approval if it has not been received within 90 days of notice by the Board to such official and the Board has responded to the State official's concerns.

Section 122 also clarifies the fact that when the FSLIC acts in its capacity as a receiver of a Federal association, it pays the credit obligations of that institution only in its capacity as receiver. The present statutory language raises the possibility that the FSLIC's insurance fund might be held liable for all the debts of a defaulted Federal association. Additionally, the amendment would allow the FSLIC, as receiver of a defaulted institution, to make such disposition of the defaulted institution as it determines to be in the best interests of the assoication, its savers and the Corporation itself. Currently, an anomalous situation exists whereby the ability of the FSLIC to make "such other disposition" of a defaulted S&L as is in the best interests of its insured members applies only to State-chartered insured institutions, and not to Federal associations.

Section 123: Emergency Thrift Acquisitions

This section allows the FSLIC, regardless of any other law (except antitrust law) to authorize an insured institution eligible for FSLIC assistance to merge with any other insured institution or an FDIC-insured bank, or to be acquired by any holding company. This would enable the FSLIC to arrange mergers of institutions across State lines notwithstanding interstate branching prohibitions, and to let holding companies acquire institutions other than in their home State, and without regard to normal activities restrictions.

Acquistions have to be approved by the primary Federal supervisor of any acquiring company that is not an FSLIC insured institution. In addition, such acquistions cannot be approved without the written approval of the State supervisor of any State-chartered institution, except that, if such approval is not given within 90 days of the institution reaching zero net worth, then the acquisition can proceed without such approval.

FSLIC may solicit offers from any prospective purchaser it determines is qualified and capable of providing the needed assistance. After the first round of bidding, if the bid that results in the lowest cost to the FSLIC is not from an in-State same-type institution as the failing institution, all persons who submitted bids within 15 percent or $15 million of the lowest cost first bid may submit new bids. After the second round of bidding, the FSLIC is directed to give consideration to the following priorities: in-State, same type institution; in-State, different type institutions; out-of-State, same type institutions; and lastly, out-of-State, different type institutions. In addition, the FSLIC must give preference to minority-controlled bidders, in the case of a distressed minority association, and to institutions in adjacent States, if the FSLIC goes outside the in-State bidding tiers. If an out-of-State bid is accepted, the bill permits the acquired institution to retain all existing branches, and other existing facilities (such as, remote service units), but otherwise shall be subject to national bank branching laws. In considering authorizations, the FSLIC shall give consideration to the need to minimize the cost of financial assistance and to the maintenance of specialized depository institutions.

Section 124: Assistance to Federal Home Loan Bank Members

This section allows the FHLBB, upon its determination that severe financial conditions exist threatening the stability of member institutions, to waive the requirement of Section 16 of the Federal Home Loan Bank Act that a portion of net earnings of the FHLBanks be set aside semi-annually to a reserve account, and to allow the Banks to pay dividends from undivided profits.

Section 125: Borrowing Authority

This section allows the FSLIC to borrow from the FHLBanks, as long as the rate on the loan is not less than the FHLBank's marginal cost of funds and the loan is adequately secured.

Section 126: Insurance Fund Reserves

This section permits the FSLIC, when it determines extraordinary financial conditions exist increasing the risk to it, to terminate the payback of the secondary insurance reserve and to use the reserve exactly as it uses the primary reserve. The payback could continue thereafter, if otherwise authorized by law. Under present law, the FSLIC's secondary reserve (now approximately $700 million) is required to be paid back to insured institutions until such time as the aggregate of the primary reserve and the secondary reserve is not at least equal to 1¼ percent of the total amount of all accounts of insured members of all insured institutions. The secondary reserve at present may be used only to cover losses of the FSLIC, and only to the extent the primary reserve is not available.

Section 127: Federal Home Loan Bank Board Act

This section allows the FHLBB to delegate any of its functions, except those of promulgating regulations and performing adjudications. The Federal Reserve already has similar power under 12 U.S.C. § 248.

Section 128: Continuation of Insurance

This section provides that depositors who have accounts in a FSLIC-insured institution that merges into another such institution in which they have accounts will be able to have separate insurance for the two accounts for a period of six months. Authority to offer short-term dual coverage of this type already is possessed by the FDIC.

Part C: National Credit Union Administration Amendments

Section 131: Emergency Merger Authority

This section amends Section 205 of the Federal Credit Union Act to authorize the NCUA Board to approve a merger or consolidation of an insured credit union with another insured credit union without regard to the traditional common bond requirements of Section 109 of the Federal Credit Union Act and without regard to requirements of state law, provided the Board determines that no other reasonable alternatives are available and the public interest would best be served if approval is granted. This section would also authorize the NCUA Board to allow the purchase and assumption of an endangered insured credit union by any other federally-insured financial institution.

Section 132: Board's Authority as Conservator

This section amends the administrative provision in Section 205 of the Federal Credit Union Act to permit the NCUA to exercise the option of taking possession and control of a federally-insured credit union when necessary to conserve its assets, protect the insurance fund, or to protect the interest of a credit union's member. The proposed conservatorship authority is similar to that available to the Comptroller of the Currency and Federal Home Loan Bank Board to prevent the liquidation of a credit union by allowing immediate control of operations with a goal of permitting the credit union to resume normal operations. Such conservatorship authority can also be used to prevent deterioration of a credit union's operations pending liquidation and thus lessen the likely impact of a liquidation on creditors, the share insurance funds, and the credit union's membership.

In the case of federally-insured state-chartered credit unions, this section requires that the state credit union supervisor be consulted at least 24 hours prior to the use of the authority given to the National Credit Union Administration and that a written certification of the NCUA's determination be provided to the state supervisor as soon as possible.

Part D: Sunset provision

Section 141: This section sunsets the emergency provisions of Title I five years after the date of enactment, which is the date upon which they become effective.

TITLE II: CAPITAL ASSISTANCE

Sections 202 and 203 establish a program whereby Federally-insured financial institutions may exchange capital notes with the Federal insurance agencies to buoy up their net worth.

To qualify, institutions must (1) have net worth of 3 percent or less (2) have incurred losses during the two previous quarters; (3) comply with the terms established by the insuring agencies (although no merger resolution may be required from an institution which after receipt of assistance will have positive net worth for at least nine months); (4) be solvent for at least six months; and, (5) have at least 20 percent of their assets invested in residential mortgages or mortgage-backed securities.

State consultation, as well as consultation with the appropriate Federal banking agency in the case of a commercial bank, will be required.

The initial formula will be as follows:

Net worth	*Level of assistance*
3 percent or less	30 percent of period loss.
2 percent or less	40 percent of period loss.
1 percent or less	50 percent or period loss.

The insuring agencies may change the formula but cannot provide more than 100 percent of period loss.

State law overrides.—(1) One provision ensures that the capital notes will be treated as net worth and that State chartered institutions can continue to operate and pay dividends.

(2) As long as a qualified institution has notes outstanding, it will not be liable for any State or local franchise tax.

Statutory net worth for savings and loans is amended by deleting statutory minimum and requiring institutions to hold adequate reserves in a form satisfactory to the Federal Home Loan Bank Board.

TITLE III: DEPOSITORY INSTITUTIONS INSURANCE AND SERVICES

Section 301. Title.—Section 301 states that the bill may be cited as the "Thrift Institutions Restructuring Act of 1982."

Section 311. Chartering and Purpose.—This section would revise Sec. 5(a) of the Home Owners' Loan Act of 1933 ("HOLA") to specify that the Bank Board may charter Federal associations known as Federal savings and loan associations or Federal savings banks and that the purpose of such activity shall be to provide thrift institutions for the deposit or investment of funds, and for the extension of credit for homes, and other goods and services. Present language limiting the chartering of Federal mutual savings banks ("FMSBs") and providing them with investment and activity limitations different from those of Federal S&Ls basically is eliminated in order to provide a parity of entitlements between all Federal associations. Consistent with the liberalization of stock conversion options and association investment authority contained in the bill, references in Sec. 5(a) to Federal associations as mutual institutions are deleted, and the purposes of such associations are widened, as indicated previously, beyond the current exclusive focus on housing.

Section 312. Demand Accounts and Capital Stock.—This section would revise Sec. 5(b)(1) and (2) of the HOLA. Under revised Sec. 5(b)(1), as limited by revised Sec. 5(b)(2), Federal associations would be able to accept demand accounts from persons or organizations that have established a business relationship with the association, except that such accounts could also be accepted from such persons or organizations for the sole purpose of effectuating payments thereto by a non-business customer. At present, Federal S&Ls are not authorized to offer demand accounts; their only transactions account, the NOW account, is statutorily subject to a 30-day notice requirement. Because NOW accounts are not available to corporations, S&Ls are thus cut off from a profitable source of transactions account business. The new authority would be patterned after the current limited power to accept demand deposits of Federal MSBs.

In addition, Sec. 5(b)(1) would be amended to eliminate the statutory notice-of-withdrawal period for savings accounts (including

NOW accounts). That period for savings accounts (including NOW accounts). That period is currently thirty days. This would enable S&Ls to be more competitive with commercial banks with respect to this type of account.

The amendment to Sec. 5(b)(2) also would delete an existing prohibition against the issuance of capital stock by Federal S&Ls and substitute an explicit grant of authority to issue such stock. The current prohibition acts to prevent the Bank Board from authorizing Federal stock S&Ls on a de novo basis, for explicit provisions elsewhere now authorize Federal stock associations on a conversion basis, notwithstanding the prohibition contained in Sec. 5(b)(2).

Section 313. Conversions of Federal Charters.—This section would amend Sec. 5(i) of the HOLA to allow any institution that is a Federal Home Loan Bank member (or is eligible to become a member) to convert to a Federal S&L, a Federal savings bank, or a Federal mutual savings bank. As part of the conversion process (or thereafter), the convering (or converted) institution could change from the mutual to the stock form (or the reverse) and would be free to elect to designate itself as a Federal S&L, a Federal savings bank, or a Federal mutual savings bank, regardless of its previous denomination. Present law does not allow Federal stock savings banks, and does not authorize de novo charters of Federal savings banks or of Federal stock S&Ls. Moreover, current law does not permit state stock associations to obtain Federal stock charters unless they existed as stock entities before 1976, and forbids chartering of Federal stock associations in states that do not allow state stock institutions. Procedures for conversions back to state institutions would be changed slightly, making explicit provision for conversion to stock institutions, deleting an obsolete reference to the General Manager of the FSLIC and substituting the Bank Board's General Counsel, and striking obsolete provisions pertaining to Treasury or Home Owners' Loan Corporation ownership of Federal association shares. Persons aggrieved by final action of the Bank Board respecting a conversion would be provided the same right of review currently granted in such cases by Sec. 402(j)(4) of the National Housing Act. Because current law may allow Federal savings banks to enage in certain activities and make certain investments not authorized under this bill, revised Sec. 5(i)(4) would permit FSBs that converted prior to enactment of the bill to continue those activities or investments to the extent authorized by the Bank Board. These grandfathered rights would pass to the successor institution in the event of a merger or consolidation. Grandfathering also would continue to be extended to FSBs that convert to that status from state charters.

Section 314. Conversion from State Mutual to State Stock.—This section would amend extensively Sec. 402(j) of the National Housing Act. That provision governs the now expired moratorium on mutual-to-stock conversions, and is substantially obsolete. Currently significant provisions that would be dropped include a burdensome annual report on conversion activity, and a prohibition against creation of Federal stock institutions in states where stock associations do not exist. As revised, Sec. 402(j) simply would retain current FSLIC jurisdiction over state mutual to state stock conversions involving insured institutions, and would preserve the existing judicial appeal procedure available to persons aggrieved by agency conversion decisions.

Section 321. Overdrafts.—This section would amend Sec. 5(c)(1)(A) of the HOLA to provide that overdraft loans could be issued with respect to any transactions account of a Federal association, rather than only against NOW accounts, as is currently the case.

Section 322. Real Property Loans.—This section would amend Sec. 5(c)(1)(B) of the HOLA to allow Federal associations to invest in residential real property without limitations on loan-to-value ratios. Additionally, this section authorizes loans of non-residential real property up to 40 percent of an association's assets.

Section 323. Time Deposits in S&Ls.—This section would amend Sec. 5(c)(1)(G) of the HOLA to allow associations to invest in each other's time and savings deposits. Currently, associations wishing to invest in time and savings deposits must utilize FDIC-insured commercial banks, except to the limited extent authorized under 12 U.S.C. Sec. 1730b.

Section 324. Governmental Securities.—This section would amend Sec. 5(c)(1)(H) of the HOLA to allow Federal associations to invest up to 100 percent of their assets in obligations of or issued by State or local governments. Except for investments in general obligation securities, however, investments in obligations of or issued by any one issuer could not exceed $250,000 or 10 per centum of the total amount of the capital and surplus of the association.

Section 325. Commercial and Other Loans.—This section would provide Federal associations with authority to make secured or unsecured loans for commercial, corporate, business or agricultural purposes. The aggregate amount of such loans would be limited to 10 percent of assets (15 percent for federal savings banks) prior to January 1, 1984, and 15 percent thereafter. No more than half the available investment basket could be used for loan originations, with the remainder to be used for loan participations or purchases.

Section 326. Phase out of Differential.—This section repeals the existing language of Public Law 94-200 respecting the statutory differential. DIDC is given the authority to administer all differentials. All differentials shall be eliminated or phased out by January 1, 1985. The existing phase-out schedules for all interest rate differentials previously agreed to by regulation shall be maintained. No differential on any category of deposit or account established after July 1, 1982 shall be maintained on or after January 1, 1984.

Section 327. Money Market Account.—This section requires DIDC to authorize a new deposit account to enable institutions to compete effectively with accounts offered by money market mutual funds not later than 60 days after the enactment of this subsection.

Section 328. Technical.—This section amends existing Sec. 5 (c)(1)(O) and Sec. 5 (c)(4)(C) of the HOLA to remove from Sec. 5 (c)(4)(C) existing authority for Federal associations to invest in certain insured land development loans and place such authority in Sec. 5 (c)(1)(O). This is merely intended to permit an easier reading of Sec. 5(c), as the reorganization will place the land development loans in a provision dealing with other insured loans of similar type, and will leave revised Sec. 5 (c)(4)(C) to deal solely with foreign assistance investments. In addition, in Sec. 5(c)(1)(O), the amendment would change the name of the "Urban Growth and New Community Development Act of 1970" to the "National Urban Policy and New Community Development Act of 1970." Sec. 5(c)(4)(C) of HOLA is amended in Sec. 330 of this Act to conform.

Section 329. Consumer Loans.—This section would create a new provison of the HOLA authorizing investments in consumer loans, including inventory and floor planning loans. Without the authority to make loans of the latter two types, the effectiveness of the power to extend consumer credit is substantially diminished. Additionally, this section increases such consumer lending authority to 30 percent of assets.

Section 330. Additional Investment Authorities.—This section permits an association to invest in tangible personal property and engage in equipment leasing up to 10 percent of the assets of the association. Additionally, this section expands the scope of the current 5 percent-of-assets education loan authority to include any loan for educational purposes. At present, Federals may make such loans only for the purpose of paying for the expenses of university, college, or vocational education.

This section restores authority to Federal associations to invest in small business investment corporations that was inadvertently deleted in the course of the re-enactment of the provision in P.L. 96-221. This replaced authority to invest in certain state and local government obligations that is to be subsumed under Section 324, supra.

Section 331. Tie-In Prohibitions.—This provision applies the anti-tying restrictions to Federal thrifts in a manner generally comparable to the anti-tie-in provision applicable to bank holding companies under the Bank Holding Company Act of 1956, as amended.

Section 332. Liquidity Eligible Investments.—This section would amend Sec. 5A(b)(1)(B) of the Federal Home Loan Bank Act (12 U.S.C. Sec. 1425a(b)(1)(B)) to specify that members of the Federal Home Loan Banks could use their investments in time and savings deposits in other members, or in institutions eligible to become members to help satisfy the statutory requirement that they maintain at all times a certain amount of liquid assets. Present law authorizes time and savings deposits to count toward satisfaction of this liquidity requirement only if the deposits are in Federal Home Loan Banks or commercial banks.

Section 333. Overlapping Jurisdiction.—This section would ensure that FSLIC-insured institutions and institutions chartered by the Federal Home Loan Bank Board would continue to be exclusively governed by the Savings and Loan Holding Company Act with respect to acquisitions of control by other companies. Without this amendment, such insured institutions conceivably could be required to meet the requirements of both the Bank Holding Company Act and the Savings and Loan Holding Company Act, a burdensome and confusing result.

Section 334. Limitation on Branching by Federal Associations.—This section would limit interstate branching by Federal associations to those which have an asset composition such that they qualify for the benefits of the so-called "bad debt deduction" under the Internal Revenue Code. Furthermore, retention of out-of-state branches would be contingent upon the Bank Board's determination that total assets attributable to branches in the foreign state are such that those branches, taken as a whole (assuming they otherwise were eligible), would qualify for the bad debt deduction. Federals with existing interstate branches would be grandfathered, and state institutions with interstate branches that convert to federal charters would likewise not be forced to give up their out-of-state facilities. In addition, Federals would be able to branch into those states that permit such penetration by out-of-state thrifts. The provision clarifies the fact that branches resulting from the extraordinary powers granted the FSLIC would not be affected by this limitation. Finally, the section would allow the Bank Board to give Federals up to two years to dispose of illegal branches.

Section 335. Limitation on Savings and Loan Holding Company Activities.—This section would limit the activities permissible for a savings and loan holding company and its non S&L subsidiaries when the company's S&L subsidiary acquires an asset mix such that it no longer qualifies for the bad debt deduction. The activities therefter permissible would be those available to multiple savings and loan holding companies and their subsidiaries under 12 U.S.C. Sec. 1730a(c)(2). Affected companies would be given three years to either come into conformance or sell the S&L subsidiary.

Section 341(a)(1) defines the term "due-on-sale clause" as a contractual provision which gives the lender the right to require payment of a loan secured by real property, where the property, or an interest in the property, is transferred without the lender's consent. Due-on-sale clauses vary in scope and language. Usually they are contained within a mortgage or a deed of trust. Most conventional mortgage documents are executed on an FNMA/FHLMC Uniform Instrument; and covenant 17 of that instrument contains the most widely used due-on-sale clause.[1]

Section 341(a)(2) defines the term "lender" as a person, or a government agency making a real property loan, or any assignee or transferee of a person or government agency. This definition includes individuals, state and federally chartered savings and loan associations, mutual savings banks, state chartered banks, national banks, mortgage bankers and other HUD approved lenders, manufactured home retailers which extend credit, finance companies which make real property loans, agencies of the federal government (such as the Department of Housing and Urban Development), and transferees (such as the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association) of any of them.

---

[1] Covenant 17 of the FNMA/FHLMC Uniform Instrument reads as follows:

Transfer of the Property; Assumption. If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years of less not containing an option to purchase. Lender may, at Lender's option, declare all the sums secure by this Mortgage to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this Mortgage shall be at such rate as Lender shall request. If Lender has waived the option to accelerate provided in this paragraph 17, and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Mortgage and the Note.

If the Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 14 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period. Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 18 hereof.

Section 341(a)(3) defines the term "real property loan" to include a loan, mortgage, advance or credit sale (1) secured by a lien or real property; (2) secured by stock allocated to a unit in a cooperative housing corporation or (3) secured by a residential manufactured home.

The Committee notes that state laws have variously characterized the liens resulting from credit transactions involving residential manufactured homes as either an interest in real property, or an interest in personal property, or an interest in both. Therefore, the qualifying phrase "whether real or personal property" only applies to "residential manufactured home" to make it clear that personal property manufactured home transactions are covered transactions under this subsection, and does not apply to other personal property loans.

Section 341(a)(4) defines the term "State" to include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands.

Section 341(b) authorizes lenders to enter into and enforce due-on-sale clauses in real property loans notwithstanding state constitutional provisions, state laws, or state judicial decisions. Lenders may enforce such clauses in accordance with the terms of the loan contact, subject to the limitations set forth in Section (c) and (d). In exercising their rights and enforcing due-on-sale clauses, lenders are encouraged to permit assumptions of real property loans either at the interest rate contained in the loan, or at a blended rate (a rate between the contrct rate and market rates). This section does not prohibit assumptions of real property loans at the same, or a blended, interest rate.

Section 341(c) provides that the federal preemption shall not apply to loans originated or assumed between the time the state acted to restrict the enforcement of due-on-sale clauses, and the time the federal preemption becomes effective. State action includes state constitutional provisions, judicial decisions, and state laws which restrict the enforcement of due-on-sale clauses. Loans originated during this "window period" will continue to be subject to applicable state due-on-sale restrictions for three years following enactment of this legislation, unless state legislatures (for loans originated by non-federally chartered lenders), the Comptroller of the Currency (for loans originated by national banks), or the National Credit Union Administration Board (for loans originated by federally chartered credit unions) act to otherwise regulate such loans. Due-on-sale clauses in window period loans will become enforceable at the end of the three year period absent action by the state legislature, the Comptroller, or the NCUA. Lenders have the right to require future transferees of a window period loan to meet customary credit standards applicable to loans secured by similar property, and may accelerate the loan if the transferee fails to meet these customary credit standards. Lenders are prohibited from exercising due-on-sale clauses for transfers involving window period loans made before the effective date of this act. Loans originated by federal savings and loan associations and federal savings banks would be exempt from this window period restriction.

Section 341(d) restricts the ability of lenders to enforce due-on-sale clauses under certain circumstances. These restrictions apply to the enforceability of any due-on-sale clause after the date of enactment of this legislation, regardless of the nature of the lender or the time the loan was originated. Thus, any action of a State legislature, the Comptroller of the Currency, or the National Credit Union Administration Board with respect to window period loans pursuant to subsection (c) would not override these consumer protections.

Section 341(d)(1) prohibits the exercise of an option pursuant to a due-on-sale clause upon the creation of a lien or other encumbrance which is subordinate to the lender's security interest, unless it is accompanied by a transfer of rights of occupancy in the property.

Section 341(d)(2) prohibits the exercise of an option pursuant to a due-on-sale clause upon the creation of a purchase money security interest for household appliances.

Section 341(d)(3) prohibits the exercise of an option pursuant to a due-on-strike clause if the property is transferred to a joint tenant, or a tenant by the entirety, by devise, descent or operation of law.

Section 341(d)(4) prohibits the exercise of an option pursuant to a due-on-sale clause if the property is transferred by a lease which runs for three years or less, and which does not contain an option to purchase the mortgaged property.

Section 341(d)(5) prohibits the exercise of an option pursuant to a due-on-sale clause if the property is transferred to a relative and the transfer is a result of the death of the borrower.

Section 341(d)(6) prohibits the exercise of an option pursuant to a due-on-sale clause if the property is transferred to the spouse, or the children, of the owner of the property.

Section 341(d)(7) prohibits the exercise of an option pursuant to a due-on-sale clause if the property is transferred to the spouse of the borrower as a result of a decree of a dissolution of marriage, legal separation agreement, or incidential property settlement agreement.

Section 341(d)(8) prohibits the exercise of an option pursuant to a due-on-sale clause if the property is transferred into an inter vivos trust in which the borrower is, and remains, a beneficiary, and where such transfer does not result in a change in the occupancy rights in the property. If subsequent transfers of beneficial interest within such trust involve transfer of rights of occupancy in the property, the lender has the right to enforce its rights under the due-on-sale clause.

Section 341(d)(9) permits the Federal Home Loan Bank Board to use its rulemaking authority to provide additional consumer protections for circumstances where the enforcement of due-on-sale would be inequitable, which the Committee has not forseen.

Section 341(e) authorizes the Federal Home Loan Bank Board, in consultation with the Comptroller of the Currency, to issue rules, regulations and interpretations for this section. In particular, it is the Committee's intent that the Bank Board exercise rulemaking authority under this section to issue implementing rules interpret-ing the consumer protections set forth in subsection (d). The Committee does not intend that the Bank Board analyze and interpret various state laws to determine the beginning dates for the window periods of states which presently restrict the enforcement of due-on-sale clauses.

Section 341(f) prohibits the Federal Home Loan Mortgage Corporation from implementing its due-on-sale policy announced on July 2, 1982, until the earlier of January 1, 1983 or the date this legislation is enacted.

Section 341(g) clarifies the intent of Section 501 of Public Law 96–221 that balloon payment provisions shall not prohibit the enforcement of due-on-sale clauses in real property loans under this section.

Section 351. Payment of Attorneys' Fees.—This section would clarify that a court may assess attorneys' fees against the Bank Board only in the event the agency *loses* a lawsuit.

Section 352. Security for Advances.—This section would strike the extensive and detailed statutory colleralization requirements appearing in Sec. 10 of the Federal Home Loan Bank Act, and give the Bank Board authority to prescribe what should constitute acceptable security. In addition, it would correct a technical ommission connected with the recent liberalization by Congress of the stock-to-advances ratio that must be observed by FHLBank members.

Section 353. Deletion of Obsolete Requirements.—This section would delete obsolete language in Sec. 6(c) of the Federal Home Loan Bank Act that operates to require a handful of Federal Home Loan Bank members to hold stock in excess of the one percent of aggregate loan principal level applicable to all other members.

Section 354. Compensation of Advisory Committee Members.—This section would allow the Bank board to compensate the members of the Federal Savings and Loan Advisory Council, subject to the limitations of the Federal Advisory Committee Act. This would be particularly useful in attracting public interest members of the FSLAC, who currently serve at a considerable financial sacrifice becasue of the inadequacy of the traveling expense reimbursement currently available to them.

Section 355. Withdrawal from Membership.—This section would require an institution withdrawing voluntarily from FHLBank system membership to pay prepayment penalties in connection with liquidating any indebtedness it owes the Bank assuming the contract governing the indebtedness calls for imposition of such penalties. In addition, this section would prevent institutions leaving the FHLBank System from reentering for five years thereafter except in connection with receiving a federal charter.

TITLE IV: PROVISIONS RELATING TO NATIONAL AND MEMBER BANKS

Part A—General provisions

Section 401 amends 12 U.S.C. § 84 to increase and clarify the statutory lending limits affecting national banks. The revised provision increases the existing 10% single borrower ceiling to permit a national bank to make unsecured loans in an amount up to 15% of its unimpaired capital and surplus, plus an additional 10% on loans fully secured by readily marketable collateral. Existing statutory exceptions are simplified or deleted as unnecessary where absorbed by the new higher ceiling.

The Comptroller is granted specific authority to promulgate regulations to carry out the purposes of the section. For example, such rules may establish, as economic conditions and financial practices change, separate limitations on specific classes of loans. The Comptroller is also authorized to determine when and to what extent loans putatively made to one person may be attributed to another. Such authority is necessary to assure that banks may legally rely on the interpretive opinion letters of the agency. The revised section's effective date is delayed six months in order to provide sufficient time for the promulgation of rules and regulations.

Section 402 repeals 12 U.S.C. § 82, which establishes borrowing limitations for national banks. Statutory limitations on the liabilities of national banks have remained essentially unchanged since original enactment of the National Bank Act in 1864. Since that time, however, the nature of the banking business—especially the manner in which banks are funded—has altered considerably. The rigid limitations of § 82 adversely restrain bank flexibility and competitively disadvantage national banks. Many states have no such statutory restraints upon state-chartered institutions.

Section 403(a) amends 12 U.S.C. § 371 to simplify the statutory framework by which national banks are authorized to engage in real estate activities. The revised provision deletes existing rigid statutory standards and authorizes the Comptroller to promulgate regulatory standards affecting such conduct including the terms and conditions of mortgage transactions. A delay in the revised section's effective date has been provided to permit the promulgation of such regulations.

Section 403(b) is a conforming amendment to 12 U.S.C. § 92, which deletes the existing reference to the authority of national banks located in cities and towns whose population is less than 5,000 to act as brokers for real estate loans. The amendment clarifies the authority of any national bank, regardless of its location, to engage in activities such as arranging for a fee, loan commitments from third parties or assisting state and local governments in placing funds made available through mortgage revenue bonds, so long as these activities are incidental to the business of banking.

Section 404(a) amends 12 U.S.C. § 27 to clarify the authority of the Comptroller of the Currency to charter a "bankers' bank," a bank which is owned by other depository institutions and limited to doing business with depository institutions, their officers, directors, or employees. This section would also grant OCC express rulemaking authority regarding the chartering and operation of such banks. Such authority is necessary inasmuch as existing statutory restrictions appropriate for full-service commercial banks may prove incompatible with the operation of these institutions.

Section 404(b) amends 12 U.S.C. § 24, which sets forth the powers of national banks, to clarify the authority of national banks to own stock in federally chartered bankers' banks and bank holding companies that own bankers' banks, if all subsidiaries of such bank holding companies provide services exclusively to depository institutions. This section also permits a national or state bankers' bank to take the bank holding company form of organization.

Section 404(c) amends 12 U.S.C. § 1818 to clarify that the enforcement powers of the OCC extend to national banks operating under a limited charter, for example trust companies and bankers' banks. Because these associations may not receive retail deposits, they may be uninsured.

Section 404(d) defines "bank" for the purposes of 12 U.S.C. 1841(c) to include state or federally chartered bankers' banks. The amendment also exempts state-chartered bankers' banks from the insurance requirements of 12 U.S.C. 1841(c).

Section 405(a) amends 12 U.S.C. § 30 to delete the existing requirement for agency approval of a move by a national bank of its headquarters office to any approved branch location within the same city, town or village. The provision retains both the need for agency and shareholder approval of a move to any other location. No move 30 miles beyond the boundaries of the city, town or village may be approved.

The amendment also eliminates the requirement for Comptroller approval of name changes of national banks and substitutes a notice requirement. This change would effectively subject future name changes by national banks to existing trademark and trade name laws, including the Federal Lanham Act and state statutory and common law principles of unfair competition.

Section 405(b) makes a conforming change to 12 U.S.C. § 22.

Section 406 amends 12 U.S.C. § 94, to provide that: (1) the existing special venue provision will be retained only in actions in which either a closed national bank or the FDIC, as receiver of such a bank, is named in the complaint, and (2) venue for such an action will lie in the appropriate federal, state, or local court where the bank's principal place of business is located.

Section 407 amends 12 U.S.C. § 95(b)(1) to authorize a national bank to either stay open or close, at its discretion, on a State-designated holiday, unless the Comptroller directs otherwise.

Section 408 provides for notice to potential claimants and final disposition of unclaimed property which has been held by the OCC for over forty years. This property is largely comprised of items recovered from safekeeping arrangements of national banks closed during the Depression.

The notice provided by the OCC shall contain the names of last known owners, names and locations of affected closed banks, and a general description of the various types of unclaimed property held in order to give owners or their heirs, perhaps unaware that such property exists, a final opportunity to obtain possession. The OCC shall informally determine the validity of any claim or claims and shall not be subject to legal liability for its determination or for any disposition of such property. Upon expiration of the claims period and receipt of adequate proof of a valid claim, the OCC shall deliver the property to the claimant.

Provision is made for disputes among two or more claiming persons as to lawful ownership, which disputes are to be resolved by the courts. Any actions against the United States or the OCC shall be determined by the U.S. Claims Court. If there remains property for which no valid claim has been filed, it shall become property of the United States after recoupment of all agency expenses from the proceeds of the sale of such remaining property.

Section 409 is a technical amendment to the provisions of the Depository Institutions Deregulation and Monetary Control Act of 1980 regarding those national banks affected by termination of the closed receivership fund.

Section 410 amends Section 13 of the Federal Reserve Act to increase the maximum allowable ratio of acceptances and obligations for participation shares to capital and surplus to 150 percent and 200 percent with Federal Reserve Board approval. (Currently the ratio is 50 percent and 100 percent with Federal Reserve Board approval.) However, acceptances growing out of domestic transactions cannot exceed 50 percent of the bank's authorized issuance limit and the issuance of unsecured acceptances to any one customer is limited to 10 percent of the bank's capital and surplus. Banks are allowed to subtract participations from the overall acceptance-to-capital ratio limitations.

The branches and subsidiaries of foreign banks subject to reserve requirements operating in the U.S. acceptance market are brought under the ratio setting control of the Federal Reserve Board. The capital of the United States branch or agency of a foreign bank is defined to be the dollar equivalent of the paid up capital stock and surplus of the foreign bank as determined by the Federal Reserve Board.

Section 411 amends Section 23A of the Federal Reserve Act which governs bank transactions with affiliates to tighten the statute and close several unintended loopholes, liberalize certain unduly restrictive provisions and simplify the statute in order to enhance compliance and enforcement. The amendments give bank holding companies greater freedom to transfer funds among their subsidiary banks, while prohibiting the purchase of low-quality assets; broaden the definition of affiliate to include real estate investment trusts and other organizations that are sponsored and advised by a banking organization; expand the types of collateral permitted on bank loans and extensions of credit to affiliates, while requiring that these additional types of collateral have a high value relative to the loan amount; and expand the coverage of the statute to include most types of assets purchased by a bank from an affiliate.

Section 412 exempts depository institutions with deposits below an indexed threshold amount, beginning at $5 million, from the reserve requirements of the Monetary Control Act of 1980.

Section 413 allows state unclaimed property auditors and examiners to review relevant national bank records for the sole purpose of ensuring compliance with state unclaimed property or escheat laws, if they have reasonable cause to believe that the bank has violated those laws.

Section 414 amends 12 U.S.C. 29 to permit certain national banks currently holding real estate, which has been nominally valued on their books, to continue to own this real estate, for such period of time as permitted by the law applicable to state chartered banks in the state in which the owning bank is located.

Part B—Financial Institutions Regulatory Act amendments

Section 421 amends Section 22(g) of the Federal Reserve Act by deleting current size limits on loans to executive officers of member banks of $60,000 for real estate loans and $20,000 for loans for children's education. The specific limitation of $10,000 on loans for any other purpose is replaced with a grant of authority to the bank supervisory agencies to set an appropriate limit based on current economic conditions.

Section 422 amends Section 22(g) of the Federal Reserve Act by deleting paragraph (9), which currently requires each member bank to file quarterly reports on all loans made by the bank to its executive officers. Inasmuch as examination procedures require the review of all insider loans, this burdensome reporting requirement is unnecessary.

Section 423 amends Section 22(h)(2) of the Federal Reserve Act by deleting the specific statutory figure of $25,000 above which loans to insiders must be approved by the board of directors. The bank supervisory agencies are authorized to set an amount in lieu of the statutory figure.

This section would also permit a bank to establish a loan or executive committee composed of members of the board of directors of the bank to approve such loans.

Section 424 amends 22(h)(6)(D) and (E) of the Federal Reserve Act to provide that the restrictions on loans by banks to their executive officers, directors and principal shareholders do not automatically apply to persons acting as officers, directors or principal shareholders of any subsidiary of the bank holding company of which the member bank is also a subsidiary.

Section 425 amends Section 18(j)(2) of the Federal Deposit Insurance Act to exclude a foreign bank that maintains a branch in the United States but to cover the insured branch. Under the International Banking Act of 1978 (P.L. 95-369), a foreign bank that has an insured branch is treated as a nonmember insured bank (12 U.S.C. § 1813(h)). Without the exclusion, a foreign bank would be subject to the provisions of Section 22(h) of the Federal Reserve Act, which are made applicable to nonmember insured banks as if they were member banks (12 U.S.C. § 1828(j)(2)). This exclusion is consistent with the exemption fromm Section 23A for foreign banks under the International Banking Act (12 U.S.C. § 1828(j)(1)) and with the requirement of that statute (12 U.S.C. § 3105(c)) that the Board submit to the Congressional banking committees a recommendation regarding limitations that should be placed on foreign banks regarding loans to their affiliates. The Board retains residual supervisory authority over all U.S. operations of foreign banks.

Section 426(a)–(c) amends the various civil money penalty provisions of the Federal Reserve Act, Bank Holding Company Act of 1956, Bank Holding Company Act Amendments of 1970, National Housing Act, Federal Credit Union Act, Federal Deposit Insurance Act, and Home Owners' Loan Act to confirm the authority of the respective supervisory agencies to compromise, remit, or modify any civil money penalty which is subject to imposition or has been imposed. Such authority is comparable to that already explicitly granted the Comptroller by Section 103 of FIRA, which added 12 U.S.C. § 93(b)(6).

Section 426(d) amends the civil money penalty provisions of the statutes affecting depository institutions to clarify that the assessment and collection of a penalty by the respective federal agencies is within the discretion of the agency. The amendment substitutes the word "may" for "shall" wherever that term now appears in the various civil money penalty provisions requiring the respective agencies to assess and collect fines.

Section 426(e) amends the civil money penalty provisions to insert needed flexibility by extending the period within which an appeal may be filed (from ten days to twenty days) and by commencing the running of the appeal period with the date of service of the order (rather than the date of issuance of the order).

Section 426(f) amends Section 5239 of the Revised Statutes. By substituting the word "Title" for the word "chapter," this amendment clarifies the civil money penalty authority granted to the Comptroller. It embodies the clear legislative intent to extend this enforcement authority to those provisions of the national banking laws currently covered by 12 U.S.C. § 93(a).

Section 426(g) is a conforming amendment which clarifies the OCC's authority to bring civil money penalty actions for violations of the national banking laws governing trust powers (12 U.S.C. § 92a).

Section 427(a) technically amends Section 407(h) of the National Housing Act regarding the Federal Savings and Loan Insurance Corporation's power to suspend certain persons from serving as directors or officers of an insured institution by changing "persons" to "person" and paragraph "(3)" to "(2)", which conforms the wording of (h)(1) to the substantially identical provison relating to the similar power of the Federal Home Loan Bank Board with regard to federally chartered savings and loan associations and mutual savings banks (12 U.S.C. § 1464(5)(A)).

Section 427(b) corrects purely technical reference errors in section 8(b)(3) of the Federal Deposit Insurance Act.

Section 427(c) makes a technical amendment to add back two sections of the FDIA that were inadvertently eliminated by the amendments contained in Section 107(a)(1) of FIRA.

Section 427(d) makes a technical amendment to a section reference in Section 205(2) of the Depository Institution Management Interlocks Act ("Interlocks Act").

Section 428 authorizes the Attorney General to carry out his responsibilities under the Interlocks Act by using the existing procedural mechanisms under the Clayton Act.

Section 429 amends the Home Owners' Loan Act, the National Housing Act, the Federal Credit Union Act, and the Federal Deposit Insurance Act to explicitly grant the respective agencies power to remove a management official of a federally chartered or federally insured depository institution for a violation of the Interlocks Act. Although the Interlocks Act clearly contemplates the use of either removal or cease and desist proceedings, the required findings under the existing removal statutes may not permit use of such procedures in some cases. Section 212 will permit removal without agency determination that, in addition to violating a law or regulation: (1) the management official's illegal conduct has caused or will probably cause the bank to suffer "substantial financial loss or other damage," or has caused serious prejudice to the depositors' interests, or that the officer received financial gain due to such violations *and* (2) the violation was one involving personal dishonesty or showing a "willful disregard" for the safety or soundness of the institution. Such considerations, although retained as relevant to other removal proceedings, are not relevant to the competitive considerations underlying the Interlocks Act. The amendment recognizes that the per se nature of an interlocks violation justifies removal without further inquiry.

Section 430(a) amends subparagraphs (A), (B), (C), and (D) of Section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 to extend the prohibitions of those subparagraphs to cover the "related interests" of directors, executive officers, and principal shareholders as well as those persons themselves. Section 106(b)(2) currently prohibits the granting of preferential loans to those insiders of banks which maintain correspondent balances with the lending bank.

Section 430(b) deletes existing subparagraph (G) of Section 106(b)(2) of the Bank Holding Company Act Amendments, which currently contains extensive reporting requirements regarding loans to insiders from another bank with which the insider's bank maintains a correspondent banking relationship. These reporting requirements are eliminated because their costs of preparation are not justified by the benefits to the supervisory agencies in identifying potential lending abuses by this method. The examination process, coupled with an improved exchange of information among the bank supervisory agencies which is expected from the amendment of the Right to Financial Privacy Act in Section 217, should provide a more efficient method for detecting such abuses.

New subparagraph (G) defines the terms "bank", "related interest of such person", "control of a company" and "company".

Section 431 deletes Section 1817(k) of the Federal Deposit Insurance Act, which presently requires all insured banks to report annually to the appropriate federal supervisory agency a list of principal shareholders and executive officers and the aggregate outstanding indebtedness of these insiders and their related interests to the bank. Consistent with the changes to the reporting requirements regarding correspondent accounts, the elimination of this requirement will reduce a reporting burden whose benefits are not justified by the costs imposed. Areas of abuse will be adequately disclosed through the examination process, which includes a routine review of insider loans.

Section 432 makes a purely grammatical correction to Section 1006(b)(2) of the Federal Financial Institutions Examination Council Act of 1978.

Section 433(a) amends Section 1113 of the Right to Financial Privacy Act by adding a new subsection (k) to clarify that, other provisions of the statute notwithstanding, the exchange of financial records or other information regarding financial institutions is permitted among and between the five member supervisory agencies of the Examination Council.

Section 433(b) makes a purely technical grammatical change to section 1114(b)(2) of the Right to Financial Privacy Act.

Section 434 amends Section 8(q) of the Federal Deposit Insurance Act by deleting the requirement that an insured bank which assumes the liabilities of another insured bank (by merger, consolidation, assumption, or contract) notify each depositor of the bank. This burdensome requirement is considered unnecessary in that banks notify depositors of merger-type transactions as a matter of routine public relations.

TITLE V: AMENDMENTS TO THE FEDERAL CREDIT UNION ACT

Section 501.—This section permits NCUA to insure custodial accounts by clarifying that the definition of "member account" includes custodial accounts for insurance purposes. This will permit federal credit unions to participate more effectively in the secondary mortgage market. In Public Law 95-22, Congress granted federal credit unions the power to sell their loans to third parties in order to take advantage of the secondary mortgage market (House Rep. 23, 95th Cong., 1st Sess. 12 (1977)). A financial institution's profit in the granting and sale of mortgage loans generally comes from loan servicing, and specially from holding the custodial accounts. However, institutional investors typically require that the custodial accounts be insured by the federal government.

Section 502.—This section deletes the requirement that NCUA be audited on a calendar year basis and will result in audits by GAO on a fiscal year basis consistent with audits of other government agencies.

Section 503.—This section simplifies the organizational process in forming a new credit union. This section eases the credit union chartering process by allowing subscribers to appear before a witness competent to administer oaths but does not, as in the present law, require them to appear collectively.

Section 504.—This section allows the board of directors to establish the par value of a share. Under existing law, par value of a share is set by statute at $5.00. In Section 524 of this Act, the credit union member's interest is safeguarded in that dividends are required to be paid on all funds in the regular share account once a full share has been purchased if the board of directors of the credit union exercises its authority under this section to increase the par value of the share above $5.00.

Section 505.—This section would require the investment of NCUA excess operating fees by the Secretary of the Treasury which are deposited by the NCUA Board. The proceeds from these investments would inure to the benefit of the NCUA, not the Treasury. This is consistent with the present treatment of share insurance premiums. Since these operating fees originate from the regulated credit unions, any income from this investment should flow back to the agency and then to those credit unions in lower operating fees rather than the public at large.

Section 506.—This is a technical amendment which relocates borrowing limits presently contained in 12 U.S.C. 1761c and Section 114 of the Federal Credit Union Act. The statutory limit on aggregate loans to an individual of 10 percent of the credit union's capital and surplus is maintained. The technical amendment places this section in a more appropriate part of the Federal Credit Union Act, but is made necessary due to Section 524 of this Act which makes a credit committee optional.

Section 507.—This section gives NCUA the authority to permit federal credit unions to make first mortgage loans for more than 30 years. This allows federal credit unions to conform to industry mortgage practice by writing loans when the first payment is due more than 30 days after the date of disbursement. Additionally, this will permit the NCUA to develop alternative mortgage regulations which would permit the extension of maturity for adjustable rate loans.

Section 508.—This section removes the "150 percent of the median sales price in the geographical area" restriction on federal credit union mortgage lending. The restriction appears to have been placed in order to prevent credit unions from financing luxury homes. (House Rep. 23, 95th Cong., 1st Sess. (1977)). In practice, the limitation is unnecessary and burdensome. It is unnecessary since credit unions do not receive applications for luxury home financing. Furthermore, it is difficult and costly to obtain reliable information on the median sales price—particularly in a time of creative financing.

Section 509.—This section permits federal credit unions to refinance members' first mortgages so that the members can use their accumulated equity for their own purposes. At present, federal credit unions are prohibited from refinancing first mortgages since the loan must be to finance the acquisition of a residence.

Section 510.—This section deletes the distinction between second mortgages made for the purposes of home improvement and all other second mortgages. Presently, second mortgages for home improvements may have maturities up to 15 years, but a maximum maturity of 12 years is applicable to all other seconds. The distinction has created problems in defining "home improvement".

Section 511.—This section permits a federal credit union to make loans complying with the terms of a government agency which has made an advanced commitment to purchase the loan. Under present law, the federal credit union can make loans which are insured or guaranteed by a government agency. This expands their authority to those loans for which they have received advanced commitments.

Section 512.—This section increases the amount which can be lent to a director or member of the supervisory or credit committees of a credit union without board approval from $5,000 to $10,000. Loans to such individuals above $10,000 would still require the approval of the board of directors of the credit union.

Section 513.—This section specifies that partial prepayment of a mortgage loan be credited on the next monthly installment due date. Existing law states that a borrower may make a partial prepayment on any business day without penalty. The change permits federal credit unions to accept prepayments on mortgages in a manner consistent with the requirements of the secondary mortgage markets' institutional investor, particularly FNMA and FHLMC. Prepayments of all loans not secured by mortgages would continue to be credited on the business day that such prepayment is made.

Section 514.—This section gives federal credit unions similar authority to invest in state and local government obligations to the same extent that saving and loan associations are permitted to invest in these obligations. This will permit federal credit unions to more actively support their communities. Federal credit unions should have the same investment flexibility to invest in state and local government obligations as given to savings and loan associations in 1980. Most state and local laws require the pledging of collateral against those funds placed in financial institutions which exceed the insurance limit, currently $100,000. Although in almost all instances, pledging requirements can be fulfilled with U.S. obligations, the law should not mandate that they cannot offer state and local government obligations as collateral. Additionally, many Federal credit unions, particularly community credit unions, feel that as good corporate citizens, they should have the ability to support their community through the purchase of municipal bonds. Credit unions recognize that they would have to evaluate the quality of the obligations and assess the possibly lower interest rates, but feel this should be a business decision not a legal restriction.

Section 515.—This section permits federal credit unions to invest in any open end management investment company registered with the SEC whose portfolio is restricted to investments in which credit unions can directly invest.

Section 516.—This section provides a clear statutory basis for federal credit unions to issue mortgage backed securities. It places federal credit unions on a parity with federal savings and loan associations which were granted this authority in P.L. 95-630.

Section 517.—This section permit federal credit unions to make deposits in any federally-insured, state-chartered bank rather than just state-chartered banks located in the same state in which the credit union does business. There is an inconsistency in present law. Section 707(7)(D) of the Federal Credit Union Act permits federal credit unions to invest in the shares or accounts in federally-insured mutual savings banks, but Section 107(8) of the Federal Credit Union Act only permits federal credit unions to make deposits in state-chartered mutual savings banks and other state-chartered banks operating in the same state as the federal credit union.

Section 518.—This section permits federal credit unions to buy or sell travellers' checks or money orders or other similar money transfer instruments to its members for a fee. Present law permits federal credit unions to perform such services at cost. Additionally, present law may not permit a federal credit union to offer to its members the service of wire transfers or other modern substitutes for money orders or travellers' checks.

Section 519.—This section permits federal credit unions to schedule their annual meetings at any time during the year. Present law statutorily requires them to hold such meetings in Janaury, February or March.

Section 520.—This section is a technical amendment made necessary by the elimination of statutorily prescribed titles for officers of the board in Section 721 of this Act and by Section 723 of this Act making the credit committee optional rather than statutorily required. Additionally, this amendment provides that board of directors can receive reimbursement for reasonable expenses incurred in the execution of their duties.

Section 521.—This section permits federal credit unions to designate the appropriate titles for the officers of the board of directors.

Section 522.—This section principally reorganizes and clarifies the duties of the board of directors. Some of the changes are made necessary by Section 723 of this Act which makes the credit committee optional. If the credit committee is not continued by a particular credit union or its powers are limited in the by-laws of that credit union; then the board of directors is given the authority to hire loan officers and establish credit policies. Additionally, the board of directors is given the power to establish the par value of shares consistent with the statutory change in Section 704 of this Act. Additionally, the board of directors is required to establish internal controls consistent with NCUA regulations and do all things necessary to fulfill the purposes and powers of a Federal credit union subject to regulations of the Board. In referring to NCUA regulations, the Committee intends to clarify that all actions of the board of directors shall be consistent with the requirements of the Act and NCUA regulations, that matters of internal control and fulfillment of Federal credit union procedures and powers shall be carefully monitored by NCUA, and that NCUA shall exercise its responsibility and authority to regulate, as appropriate, in order to prevent or correct abuses in these areas.

Section 523.—This section amends Section 114 of the Federal Credit Union Act by granting federal credit union board of directors the ability to make a credit committee optional. If there is to be a credit committee for a particular credit union, then it can either be appointed by the board of directors or elected by the members of the credit union as provided by the by-laws. The right of appeal by a member on a loan decision is preserved. If there is no credit committee, the appeal would be directly to the board of directors. This change is needed to recognize that in certain instances, particularly for credit unions with widely dispersed memberships, such as those serving the military, credit unions can better serve the financial needs of their members by relying on professional loan officers. To change the role and composition of the credit committee will require a two-thirds vote of the board of directors which are the elected representatives of the credit union membership. It should be noted that the majority of the state credit union laws do not contain mandatory member-elected credit committees.

Additionally, the last sentence of Section 114 of the Federal Credit Union Act is deleted since the sentence on longer has any meaning within the section. P.L. 95-22 (April 19, 1977) amended this section of the Federal Credit Union Act by removing the $2,500 limit on loans which were not adequately secured. Through an oversight, a clarification of what loans must be considered to be adequately secured was not stricken.

Section 524.—This section provides that if a federal credit union's par value of shares exceeds $5.00 (the present statutory par value deleted by Section 704 of this Act), the credit union must pay dividends on all funds in the regular share account since a full share has been purchased—rather than only paying dividends on full shares.

Section 525.—This section authorizes the board of directors, by a majority of a quorum of directors, of a federal credit union to adopt a policy of terminating the membership of any member based on inactivity in the affairs of a credit union. This section provides that written notice of such a policy and the effective date of said policy should be mailed to each member of the credit union not less than 30 days before the policy's effective date.

Section 526.—This section gives the National Credit Union Administration more flexibility to design regulations for central credit unions which are otherwise consistent as opposed to credit unions whose members are natural persons. The separate regulations which the National Credit Union Administration may establish for central credit unions must be consistent with the other provisions of the Federal Credit Union Act.

Section 527.—This section allows approval for conversion from federal to state charter based on the affirmative vote of the majority of those members choosing to vote on the proposal rather than a majority of all members. The section also requires that each member to be notified that the conversion issue to be voted on will be decided by a majority of those who vote.

Section 528.—This section exempts for purposes of federal insurance premium assessment the funds of state-insured credit unions deposited in a federal credit union that exceed NCUA insurance limits. This will eliminate the inequitable insurance premium assessment of deposits from state-chartered credit unions which does not exist for federally-chartered credit unions.

Section 529.—This section deletes the requirement in the present law that each new credit union be assessed a partial year premium during the year in which it is chartered and that each credit union liquidated receive a rebate on premiums paid. The computations required on both of these requirements are sufficiently complex as to exceed the cost of the benefits received. After consultation with GAO, the NCUA Office of the Comptroller concluded that that these requirements should be deleted on the basis that neither the agency nor the credit unions are receiving the intended benefits and that many man-hours are being expended in the process.

Section 530.—This authority is intended to enable the fund to continue to function in the event of extraordinary economic conditions while additional support is legislatively authorized and appropriated.

Section 531.—This section authorizes the Central Liquidity Facility to extend credit to the NCUA Share Insurance Fund in a manner consistent with the authority contained in Section 730. The provision would enable the Facility to provide the Share Insurance Fund with interim liquidity, should circumstances require, until additional resources could be legislatively authorized and appropriated.

Section 532.—This section would give the CLF specific authority to act as an Agent of the Federal Reserve System to funnel funds from the Discount Window to credit unions in the event that CLF reaches its borrowing limit and credit unions still have liquidity needs. Such an option might be used in extreme emergencies instead of having to request draw-down from the emergency line of credit at Treasury. The manner and extent to which this provision could be utilized would be entirely in the discretion and under the control of the Board of Governors of the Federal Reserve System.

TITLE VI: PROPERTY, CASUALTY, LIFE INSURANCE ACTIVITIES OF BANK HOLDING COMPANIES

Section 601 amends Section 4(c)(8) of the Bank Holding Company Act of 1956 to generally prohibit a bank holding company from providing insurance as a principal, agent, or broker. There are six exemptions to this general prohibition, resulting in the prohibition being principally applicable to the underwriting or sale of property and casualty insurance products. The exemptions establish a grandfather date (October 7, 1981) for the continuation of previously authorized insurance activities, such as selling credit related property and casualty coverages, and permit bank holding companies to engate in, among other things, credit life, disability, and involuntary unemployment insurance activities and general insurance agency activities in towns of less than 5,000 people.

TITLE VII: MISCELLANEOUS

Section 701: Truth in Lending—Student loans

This section exempts from the Truth in Lending Act and from disclosure requirements of any state law loans that are made, insured or guaranteed under any program authorized by title IV of the Higher Education Act of 1965.

Section 702: Definition of creditor

This section amends the definition of "creditor" in the Truth in Lending Act to exclude "arrangers of credit", so that in other than open end credit transactions, the Act will apply only to professional extenders of consumer credit, namely, those who regularly extend consumer credit.

Section 703: Effective date

The amendment contained in section 702 takes effect at the same time as the amendments made by the Truth in Lending Simplification Act, namely October 1, 1982.

Section 704: Industrial banks eligibility for FDIC insurance

This section permits industrial banks and like type institutions to be eligible for FDIC insurance.

Section 705: Amendment to the Bank Holding Company Act of 1956

This provision would authorize a one-bank holding company covered by the 1970 Bank Holding Company Act Amendments, which was required to divest its banking or impermissible non-banking activities as a result of that Act, but has not yet filed an irrevocable commitment to divest, to divest no later than December 31, 1983.

Sections 706 and 707: Applicability of, and securities activities under, the International Banking Act of 1978

These are amendments to the International Banking Act of 1978 (a) to provide grandfather rights for the non-banking activities of foreign banks which had applied for but had not yet received approval to operate a U.S. branch on the date of enactment of the Act and (b) to permit a foreign bank to own up to 45 percent of a U.S. non-bank affiliate (the current limitation is 25 percent.) These provisions are limited in scope and applicability and do not affect the underlying restrictions of the International Banking Act.

Section 708: NOW accounts for public funds

This section permits financial institutions to offer NOW accounts to state and local governments.

Section 709: Federal National Mortgage Association

Section 709 authorizes FNMA to issue preferred stock and makes such stock freely transferable. In addition, the section repeals the provision that restricts the amount of subordinated obligations of FNMA that may be outstanding at any time.

Section 710: Bank service corporations

This section clarifies that bank service corporations are permitted to provide services to financial institutions other than just commercial banks.

Secton 711: Reserve requirement phase-in

This section changes the grandfather date for phasing in reserve requirements from July 1, 1979 to March 20, 1980.

REGULATORY IMPACT

In accordance with Rule 29.5 of the Standing Rules of the Senate, the Committee considers that enactment of S. 2879 as reported by the Committee would substantially lessen government regulation of the operations of depository institutions.

CORDON RULE

In the opinion of the Committee it is necessary to dispense with the requirements of Subsection 4 of Rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

COST OF LEGISLATION

The Committee has requested a cost estimate of this legislation under the provisions of Section 403 of the Congressional Budget Act of 1974.

The Congressional Budget Office is preparing the estimate. However, at the time of filing, the estimate was not completed. When it is completed, it will be published in the Congressional Record before consideration of this legislation by the Senate.

ADDITIONAL VIEWS OF SENATOR JOHN H. CHAFEE

The Depository Institutions Amendments of 1982 is the end product of more than one and one-half years of work by the Senate Committee on Banking, Housing, and Urban Affairs. It represents extensive and detailed hearings before the Committee and lengthy discussions and negotiations among industry, regulatory, and Congressional participants. Our Chairman has devoted innumerable hours of thoughtful effort in the attempt to produce a comprehensive measure.

Yet what started as serious reform—the "Financial Institutions Restructuring and Services Act"—has now been eroded to merely amendments—the "Depository Institutions amendments of 1982."

These amendments give additional powers to thrift institutions. They also restrict existing powers of the commercial banks, but do not in any measurable way loosen the restraints that prohibit those banks from meeting exploding competition from non-depository institutions. Because of what it fails to do, I believe this bill is seriously deficient and unbalanced.

The dynamic and dramatic innovations sweeping the financial world have been well-documented before this Committee, yet are ignored by this legislation. These changes raise significant questions about the continuing utility of many banking laws and regulations created decades ago under very different circumstances. We have had an opportunity to effect genuine reform that would ensure a continued sound but flexible and competitive banking system. Indeed, we had a responsibility to do so.

Why, then, after one and one-half years of examination and effort were these goals not achieved? I have heard the suggestion that somehow next year would be a better year to act. I also continue to hear that we cannot afford the possible delay in passage of emergency thrift assistance that dealing with these issues might require. We have heard for over a year that "time is of the essence."

With regard to two proposals which I strongly support—authority to sponsor mutual funds and to underwrite revenue bonds—it has been suggested that more information is needed.

These proposals are hardly new. Indeed, they have been before the Congress many years and both have passed the Senate before. In this Congress alone, these provisions were examined as a part of the Comprehensive Oversight Hearings held by the full Committee and were reviewed separately in four days of hearings before the Securities Subcommittee. The drafts prepared for markup went a very great distance toward accommodating the concerns raised in the hearings. I suggest that we know enough, now, to act on these issues.

There is at least encouragement to be found in the support expressed by other members of the Committee for these securities powers for depository institutions, and in the commitment of the Chairman to make this the first priority of the Banking Committee next year. I sincerely hope that we will be able to proceed expeditiously, building on the extensive record already developed, rather than starting completely anew with the new Congress.

JOHN H. CHAFEE.

○